

# EXHIBIT B

Scott Van Nice

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
NEWARK DIVISION

- - -

IN RE: PROTON-PUMP INHIBITOR : MDL NO. 2789  
PRODUCTS LIABILITY LITIGATION : Case No.  
(NO. II) : 2:17-MD-2780 (CCC)(MF)  
: Judge Claire C. Cecchi

- - -

This Document Relates to:  
ALL ACTIONS

- - -

DEPOSITION OF SCOTT VAN NICE

- - -

January 31, 2018  
10:05 a.m.  
ULMER & BERNE, LLP  
600 Vine Street, Suite 2800  
Cincinnati, Ohio 45202

- - -

Reported by: Sara S. Clark, RMR/CRR/CRC

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- - -

## Scott Van Nice

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<p>1 APPEARANCES</p> <p>2 (VIA TELEPHONE:)</p> <p>3 Martha K. Harrison, Esquire</p> <p>4 ROPES &amp; GRAY LLP</p> <p>5 Prudential Tower</p> <p>6 800 Boylston Street</p> <p>7 Boston, MA 02199-3600</p> <p>8 617.951.7967</p> <p>9 martha.harrison@ropesgray.com</p> <p>10 on behalf of the Defendant,</p> <p>11 GSK Consumer Health, Inc.</p> <p>12 (VIA TELEPHONE:)</p> <p>13 Shevon L. Scarafale, Esquire</p> <p>14 MORGAN, LEWIS &amp; BOCKIUS, LLP</p> <p>15 1701 Market Street</p> <p>16 Philadelphia, PA 19103-2921</p> <p>17 215.963.5250</p> <p>18 shevon.scarafale@morganlewis.com</p> <p>19 on behalf of the Defendant,</p> <p>20 Merck &amp; Company.</p> <p>21 ---</p> <p>22 ALSO PRESENT:</p> <p>23 Megan Frient - Procter &amp; Gamble</p> <p>24 Hunter Bryant - Sign Language Interpreter</p> <p>25 Paige Genet - Sign Language Interpreter</p> <p>---</p>	<p>1 INDEX</p> <p>2 ---</p> <p>3 WITNESS PAGE</p> <p>4 SCOTT VAN NICE</p> <p>5 Examination By Mr. Denton: 6</p> <p>6 ---</p> <p>7 EXHIBIT DESCRIPTION PAGE</p> <p>8 1 White Paper written by Van 11</p> <p>9 Nice</p> <p>10 2 1/24/18 Letter to Denton &amp; 35</p> <p>11 Finken from Green</p> <p>12 3 30(b)(6) Notice of Deposition 84</p> <p>13 ---</p> <p>14 Certified Question on Page 17</p> <p>15 Certified Question on Page 18</p> <p>16 ---</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1                    ---</p> <p>2                    PROCEEDINGS</p> <p>3                    ---</p> <p>4                    SCOTT VAN NICE</p> <p>5                    being by me first duly sworn, as hereinafter certified,</p> <p>6                    testifies and says as follows:</p> <p>7                    EXAMINATION</p> <p>8                    BY MR. DENTON:</p> <p>9                    Q. Good morning, sir.</p> <p>10                    A. Good morning.</p> <p>11                    Q. My name is Roger Denton, and I'm here to ask</p> <p>12                    you some questions today.</p> <p>13                    I understand your name is Scott Van Nice?</p> <p>14                    A. Yes, that's right.</p> <p>15                    Q. And you work for P&amp;G?</p> <p>16                    A. Yes, that's right.</p> <p>17                    Q. What is your title or job responsibility?</p> <p>18                    A. My title would be forensic analyst.</p> <p>19                    Q. I understand you're a lawyer?</p> <p>20                    A. Yes, that's right.</p> <p>21                    Q. You have a license to practice law in the</p> <p>22                    state of Ohio?</p> <p>23                    A. Yes.</p> <p>24                    Q. You also have training and background in</p> <p>25                    e-discovery?</p>	<p>1                    A. Yes, that's accurate.</p> <p>2                    Q. And I understand from your LinkedIn page that</p> <p>3                    you have given Rule 30(b)(6) depositions in the past.</p> <p>4                    A. Yes, that's correct.</p> <p>5                    Q. Could you approximate for me how many times</p> <p>6                    you have given a deposition.</p> <p>7                    A. This is my second time.</p> <p>8                    Q. Are you familiar with the concept of a Rule</p> <p>9                    30(b)(6) designated witness?</p> <p>10                    A. Yes.</p> <p>11                    Q. You understand you're here to speak on behalf</p> <p>12                    of P&amp;G based upon the topics your lawyers have sent me</p> <p>13                    in the letter?</p> <p>14                    MR. SCHAEFER: Object to form.</p> <p>15                    A. Yes.</p> <p>16                    Q. Pursuant to your LinkedIn page, it indicates</p> <p>17                    you have a certification in electronic discovery and</p> <p>18                    computer forensics.</p> <p>19                    Is that accurate?</p> <p>20                    A. Yes.</p> <p>21                    Q. Could you explain to me what a certification</p> <p>22                    in electronic discovery is.</p> <p>23                    A. It means that I am proficient in the area of</p> <p>24                    electronic discovery with tools -- a tool specifically</p> <p>25                    called EnCase from Guidance Software.</p>
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<p>1                    A. Yes.</p> <p>2                    Q. How long have you worked in the field of</p> <p>3                    e-discovery?</p> <p>4                    A. Approximately since about 2008.</p> <p>5                    Q. And when did you start with P&amp;G?</p> <p>6                    A. Around the fall of 2002.</p> <p>7                    Q. Do you have other college degrees besides</p> <p>8                    law?</p> <p>9                    A. Yes. I have a bachelor's of science from</p> <p>10                    Rochester Institute of Technology.</p> <p>11                    Q. And was there a particular field or major?</p> <p>12                    INTERPRETER: Could you repeat the question</p> <p>13                    for the interpreter, please?</p> <p>14                    MR. DENTON: I'm sorry. I got confused.</p> <p>15                    BY MR. DENTON:</p> <p>16                    Q. I would like to know what major your BS</p> <p>17                    degree was in, please.</p> <p>18                    A. Information technology.</p> <p>19                    Q. Do you have any other advanced degrees</p> <p>20                    besides the BS in information technology and your law</p> <p>21                    degree?</p> <p>22                    A. No, I don't.</p> <p>23                    Q. In looking at your LinkedIn page, it appears</p> <p>24                    that you are in charge of the e-discovery at P&amp;G.</p> <p>25                    Is that accurate?</p>	<p>1                    Q. And what is Guidance Software?</p> <p>2                    A. Guidance Software is a software vendor that</p> <p>3                    provides a variety of products for electronic</p> <p>4                    discovery, to incident response and digital forensics.</p> <p>5                    Q. Are you involved with -- strike that.</p> <p>6                    Have you provided services for P&amp;G in</p> <p>7                    electronic discovery in previous litigation?</p> <p>8                    A. Yes.</p> <p>9                    Q. Approximately how many times?</p> <p>10                    A. I can't speculate because it cycles every</p> <p>11                    year.</p> <p>12                    Q. Okay. How many litigations are you currently</p> <p>13                    involved with P&amp;G involving your role in electronic</p> <p>14                    discovery?</p> <p>15                    A. Did you say P&amp;J?</p> <p>16                    Q. P&amp;G. I'm sorry.</p> <p>17                    A. Do you mind repeating the question again?</p> <p>18                    Q. Sure.</p> <p>19                    I'm trying to find out how many current</p> <p>20                    litigations are you working on in electronic discovery</p> <p>21                    for P&amp;G.</p> <p>22                    A. What do you mean by "litigation"?</p> <p>23                    Q. Well, you understand the current litigation</p> <p>24                    I'm here about involves Prilosec OTC?</p> <p>25                    A. Yes.</p>

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<p>1 Q. Okay. Are you involved with any other 2 litigations involving different products for P&amp;G 3 currently? 4 A. As a 30(b)(6) witness, no. 5 Q. What about working in electronic discovery 6 generally, other litigations? 7 A. No. 8 Q. Okay. Can you tell me when you first were 9 aware that P&amp;G had been made a party defendant in a PPI 10 or Prilosec lawsuit. 11 A. I was aware of this several months ago. 12 Q. Are you involved with identifying custodians 13 or sources of relevant information in this particular 14 litigation, the Prilosec litigation? 15 MR. SCHAEFER: I'll object and instruct the 16 witness not to answer to the extent that it calls for 17 disclosure of any work product or privileged 18 information, who he is working with in his capacity in 19 this litigation, apart from the disclosure for the 20 deposition here today. 21 MR. DENTON: So where do we go from here? 22 Did you instruct him not to answer? 23 MR. SCHAEFER: To the extent, yes, you're 24 asking about his role in this litigation working with 25 us in e-discovery apart from the deposition here today,</p>	<p>1 continuing objection regarding your testimony here -- 2 or regarding your questions, excuse me, on this 3 article, so as not to interrupt the deposition. But 4 this really is -- as a 30(b)(6) deposition, you're 5 asking the witness questions about an article he wrote. 6 He's not here as an individual or as an expert witness. 7 And I won't interrupt with the additional objections if 8 we can agree that with regard to this paper, you'll 9 give me a continuing objection. 10 MR. DENTON: I will give you a continuing 11 objection. 12 MR. SCHAEFER: Thank you. 13 MR. DENTON: But he's allowed to answer the 14 questions? 15 MR. SCHAEFER: Absolutely. 16 MR. DENTON: Okay. 17 BY MR. DENTON: 18 Q. Now, do you remember the question? Probably 19 not. 20 A. Do you mind repeating the question, please? 21 I'm getting old. 22 Q. Me, too. 23 MR. DENTON: Could you read it back, please? 24 (Record read as requested.) 25 A. Yes. At direction of counsel, yes.</p>
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<p>1 yes, I'll object and instruct him not to answer. 2 That's work product, his role in this litigation, apart 3 from that. 4 MR. DENTON: We respectfully disagree, but we 5 won't fight here today about that. 6 MR. SCHAEFER: Understood. 7 MR. DENTON: Would you mark this as 8 Exhibit 1, please. 9 --- 10 (Exhibit 1 marked.) 11 --- 12 BY MR. DENTON: 13 Q. Can you please identify Exhibit 1, sir. 14 A. Yes. This is a white paper that I put 15 together in collaboration with Guidance Software. 16 Q. And this material is available over the 17 internet; is that accurate? 18 A. My understanding, it is. 19 Q. When did you prepare this paper, Exhibit 1? 20 A. To the best of my knowledge, this was around 21 2012. 22 Q. This paper indicates that one of your roles 23 at P&amp;G is to identify custodians and sources of 24 information in litigation; is that accurate? 25 MR. SCHAEFER: Roger, I'll just ask for a</p>	<p>1 Q. Okay. Have you done so in the Prilosec OTC 2 litigation, that is, identify custodians and sources of 3 information relevant to the Prilosec OTC litigation? 4 MR. SCHAEFER: I'll object and instruct the 5 witness not to answer. Here again, you're going into 6 questions about his role in working with us in 7 discovery, and that is work product information. 8 MR. DENTON: Well, we may have to get a 9 ruling, because the primary reason I'm here, sir, is to 10 find out about sources of information, where it's kept, 11 what's been done, identifying relevant information and 12 relevant custodians. Certainly this gentleman does 13 that as his work at P&amp;G. I guess, why are we here if 14 he's not going to answer these questions? 15 MR. SCHAEFER: Well, you're certainly able to 16 ask those questions, and I'm not objecting to those 17 questions. But the questions you're asking him are 18 about the work he has done, if any, in this litigation 19 with respect to identifying custodians, not questions 20 about his knowledge of the data systems and 21 infrastructure and ways in which data are handled at 22 P&amp;G. Those questions are fine. 23 But as you can tell from Mr. Van Nice's 24 responsibilities at Procter &amp; Gamble, he interfaces 25 with the legal department and works on these cases in</p>

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<p style="text-align: right;">Page 14</p> <p>1 terms of discovery, and those questions are not fair</p> <p>2 game and I'll object to them.</p> <p>3 MR. DENTON: I disagree.</p> <p>4 So I assume you're going to continue to</p> <p>5 instruct him not to answer the names of custodians and</p> <p>6 sources of materials that are relevant to this</p> <p>7 litigation. Is that my understanding, Counsel?</p> <p>8 MR. SCHAEFER: You asked him if he's working</p> <p>9 with Procter &amp; Gamble to identify custodians in</p> <p>10 litigation. If you want to ask him questions about</p> <p>11 specific data systems and the persons that are involved</p> <p>12 with those data systems, that's different than asking</p> <p>13 him about who the custodians that will be identified in</p> <p>14 this litigation at the appropriate time are and his</p> <p>15 involvement in identifying those people.</p> <p>16 MR. DENTON: Well, we strongly disagree. I</p> <p>17 can see we're going to have to come back after a Court</p> <p>18 ruling, but we'll get as much as we can today.</p> <p>19 BY MR. DENTON:</p> <p>20 Q. Sir, do you know whether or not Procter &amp;</p> <p>21 Gamble has identified custodians that possess relevant</p> <p>22 information to Prilosec OTC litigation?</p> <p>23 A. Do you mind repeating the question? I want</p> <p>24 to make sure that I understood you.</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. In Paragraph 1 on Page 5, you state, quote,</p> <p>2 He or she should be able to testify how the company</p> <p>3 identifies data, what steps were taken to collect,</p> <p>4 preserve, and maintain the authenticity of the data, as</p> <p>5 well as maintain a chain of custody that's provided to</p> <p>6 counsel for review.</p> <p>7 Did I read that accurately?</p> <p>8 MR. SCHAEFER: Object to form.</p> <p>9 A. Yes.</p> <p>10 Q. And in this case, that person is you,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Are you capable today to testify how the</p> <p>14 company identifies data?</p> <p>15 A. Yes.</p> <p>16 Q. Are you able to testify today what steps were</p> <p>17 taken to collect and preserve data in this litigation?</p> <p>18 A. Yes.</p> <p>19 Q. Let's start with that question. What did P&amp;G</p> <p>20 do to collect and preserve data for the Prilosec OTC</p> <p>21 litigation?</p> <p>22 MR. SCHAEFER: I'll object to that question.</p> <p>23 And to the extent the witness is able to answer, he</p> <p>24 may. But discovery's ongoing in this litigation. It's</p> <p>25 not in the past tense. And to ask him about an ongoing</p>
<p style="text-align: right;">Page 15</p> <p>1 Sir, are you aware whether or not P&amp;G has</p> <p>2 identified custodians who have relevant information to</p> <p>3 the Prilosec OTC litigation?</p> <p>4 A. I'm not specifically aware.</p> <p>5 Q. Is your role currently the same at Procter &amp;</p> <p>6 Gamble as it was when you prepared this paper,</p> <p>7 Exhibit 1, in 2012?</p> <p>8 A. It is.</p> <p>9 Q. The contents of this paper, Exhibit 1, do</p> <p>10 they still accurately describe the process at P&amp;G for</p> <p>11 collecting and identifying custodians and sources of</p> <p>12 information?</p> <p>13 A. At a high level, yes.</p> <p>14 Q. All right. Can we go to Page 5 of Exhibit 1,</p> <p>15 please. I draw your attention to a paragraph numbered</p> <p>16 1, titled "30(b)(6) Witness."</p> <p>17 Do you see where I'm pointing you to?</p> <p>18 A. Yes.</p> <p>19 Q. And you understand you are the 30(b)(6)</p> <p>20 witness today for P&amp;G on the Prilosec OTC litigation?</p> <p>21 MR. SCHAEFER: Object to form.</p> <p>22 THE WITNESS: May I answer?</p> <p>23 MR. SCHAEFER: Yes.</p> <p>24 A. Yes.</p> <p>25 BY MR. DENTON:</p>	<p style="text-align: right;">Page 17</p> <p>1 process as if it's complete is objectionable.</p> <p>2 MR. DENTON: I disagree. That was not the</p> <p>3 question. We prefer not to have speaking and leading</p> <p>4 objections going forward.</p> <p>5 BY MR. DENTON:</p> <p>6 Q. You may answer the question, sir.</p> <p>7 A. Do you mind repeating the question?</p> <p>8 Q. Let me ask it differently.</p> <p>9 What steps were you involved with to collect</p> <p>10 and preserve data to date in the Prilosec OTC</p> <p>11 litigation?</p> <p>12 A. At a high level, the steps that I was</p> <p>13 involved with to work at the direction of counsel</p> <p>14 related to e-mail holds.</p> <p>15 Q. Have you been involved with any other action</p> <p>16 to collect or preserve data that P&amp;G may have related</p> <p>17 to the Prilosec OTC litigation?</p> <p>18 A. No.</p> <p>19 Q. Has anyone else in your department or anyone</p> <p>20 else you're aware of taken steps to collect and</p> <p>21 preserve data in addition to e-mail holds?</p> <p>22 A. Yes.</p> <p>23 Q. Can you describe what has been done with</p> <p>24 respect to the preservation and collection of data</p> <p>25 other than e-mails?</p>

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<p style="text-align: right;">Page 18</p> <p>1 MR. SCHAEFER: I'm going to object and</p> <p>2 instruct the witness not to answer. You're, again,</p> <p>3 going into work product on this ongoing litigation and</p> <p>4 asking questions about how we're responding to</p> <p>5 discovery. That's not the purpose of this deposition.</p> <p>6 MR. DENTON: I disagree. So was that an</p> <p>7 instruction for him not to answer?</p> <p>8 MR. SCHAEFER: To the extent his answer</p> <p>9 involves privileged or work product, yes, I'm</p> <p>10 instructing him not to answer. You're asking questions</p> <p>11 about ongoing conduct in discovery. This is -- apart</p> <p>12 from being beyond the subject matter of the topics for</p> <p>13 which Mr. Van Nice is being presented today, you're</p> <p>14 going into issues of discovery, on discovery, and that</p> <p>15 implicate work product, ongoing legal work at Procter &amp;</p> <p>16 Gamble with us, outside counsel, and I'm instructing</p> <p>17 him not to answer.</p> <p>18 MR. DENTON: All right. Certify that</p> <p>19 question.</p> <p>20 BY MR. DENTON:</p> <p>21 Q. Let's talk about the e-mail holds. You were</p> <p>22 involved with that, as I understand.</p> <p>23 A. At the direction of counsel, yes.</p> <p>24 Q. Okay. First of all, when was the e-mail hold</p> <p>25 put in place for the Prilosec OTC litigation?</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. DENTON: I understand that. But I don't</p> <p>2 want to have to say every time I'm certifying that</p> <p>3 question.</p> <p>4 MR. SCHAEFER: Absolutely. I'm fine with</p> <p>5 that.</p> <p>6 MR. DENTON: All right.</p> <p>7 BY MR. DENTON:</p> <p>8 Q. Do you have a list, sir, of the employees at</p> <p>9 P&amp;G that were subject to an e-mail hold?</p> <p>10 A. Yes.</p> <p>11 Q. Can you give me the approximate number of</p> <p>12 employees that were subject to that hold?</p> <p>13 MR. SCHAEFER: I'll object and instruct not</p> <p>14 to answer.</p> <p>15 MR. DENTON: How could that possibly be</p> <p>16 privileged, the number of employees?</p> <p>17 MR. GREEN: This is all outside the scope.</p> <p>18 MR. DENTON: One at a time, K.C.</p> <p>19 Go ahead, sir.</p> <p>20 MR. SCHAEFER: You're asking him questions</p> <p>21 about his ongoing work with the legal department at</p> <p>22 Procter &amp; Gamble and with outside counsel in the</p> <p>23 conduct of discovery in this litigation. This is not a</p> <p>24 deposition about discovery on discovery. There's no</p> <p>25 evidence that there's any deficiency and that you're</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. SCHAEFER: I'll object to that and</p> <p>2 instruct the witness not to answer. That is work</p> <p>3 product.</p> <p>4 MR. DENTON: It is not. Not when.</p> <p>5 Again, certify the question.</p> <p>6 We're going to be coming back at defendants'</p> <p>7 response, I believe.</p> <p>8 BY MR. DENTON:</p> <p>9 Q. How did you go about identifying which</p> <p>10 employees of Procter &amp; Gamble should have an e-mail</p> <p>11 hold for the Prilosec OTC litigation?</p> <p>12 MR. SCHAEFER: I'm going to object again and</p> <p>13 instruct the witness not to answer. This is all work</p> <p>14 product. This is not the purpose of this deposition.</p> <p>15 He's not been prepared on this topic. And I think</p> <p>16 that's reasonable and instruct him not to answer to the</p> <p>17 extent it implicates the ongoing work product and work</p> <p>18 with outside counsel and legal department at Procter &amp;</p> <p>19 Gamble.</p> <p>20 Q. Are you aware --</p> <p>21 MR. DENTON: Again, I disagree.</p> <p>22 Can I have a continuing certification to your</p> <p>23 work product?</p> <p>24 MR. SCHAEFER: Correct. But I'm going to</p> <p>25 have to object to the questions.</p>	<p style="text-align: right;">Page 21</p> <p>1 entitled to inquire into these matters. And so on that</p> <p>2 basis, I have to say that's work product, instruct the</p> <p>3 witness not to answer questions about how we are</p> <p>4 conducting discovery. You can have a continuing</p> <p>5 objection to that. That's simply work product, and</p> <p>6 you're not -- I'm not going to let the witness answer</p> <p>7 to it.</p> <p>8 MR. DENTON: I thought he was here to talk</p> <p>9 about e-mails. That's Number 1 on your letter.</p> <p>10 MR. SCHAEFER: I haven't heard one question</p> <p>11 about e-mails yet.</p> <p>12 MR. DENTON: That's all I've been talking</p> <p>13 about. How many employees' e-mails have been</p> <p>14 collected? I just want a number.</p> <p>15 MR. SCHAEFER: I'm instructing him not to</p> <p>16 answer. As you well know, you're not yet in a position</p> <p>17 of having disclosed custodians to you.</p> <p>18 MR. DENTON: Actually, we are, and that's</p> <p>19 part of the problem. I'm trying to understand why we</p> <p>20 don't have custodians produced. But that's not a fight</p> <p>21 in front of --</p> <p>22 MR. SCHAEFER: That's exactly why it's</p> <p>23 outside this deposition, and the purpose of this</p> <p>24 deposition is the topics that we've identified in the</p> <p>25 infrastructure and the systems. Not the legal work</p>

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<p>1 Mr. Van Nice has been involved with in the litigation,  2 but the infrastructure and the systems and the way they  3 operate at Procter &amp; Gamble. Questions of that nature,  4 I won't object to.  5 BY MR. DENTON:  6 Q. What e-mail system does Procter &amp; Gamble use  7 currently?  8 MR. GREEN: Good question.  9 MR. DENTON: Thank you, K.C.  10 A. So your question was again?  11 Q. What is the current e-mail system at P&amp;G?  12 A. Current e-mail system is Microsoft 365.  13 Q. And approximately when did that go into  14 effect, that system?  15 A. Approximately started using Microsoft Outlook  16 around 2005, and throughout different upgrades, we are  17 now on 365. So, again, that is the current e-mail  18 system.  19 Q. Do you know and have any information on the  20 e-mail system P&amp;G used before Outlook in 2005?  21 A. Generally speaking, yes.  22 Q. Could you share that with me, please.  23 A. Yes. The e-mail system prior to Outlook was  24 Lotus Notes, developed and owned by IBM.  25 Q. Do you know whether or not any of the Lotus</p>	<p>1 at P&amp;G would be able to retrieve a deleted e-mail?  2 A. My understanding is that we have up to 28 to  3 30 days to recover deleted e-mails from the server.  4 Q. Okay. Once that 28 to 30 days goes by, then  5 the e-mail is not retrievable, the deleted e-mail?  6 A. That's my understanding, yes.  7 Q. And has that generally been the rule since  8 Microsoft Office went into effect?  9 A. Yes.  10 Q. Do the office employees at P&amp;G have the  11 ability to use any instant messaging software?  12 A. Yes.  13 Q. What is the name of that software?  14 A. The current instant messaging software is  15 called Skype.  16 Q. And how long has Skype been in effect?  17 A. To the best of my knowledge, approximately  18 one year.  19 Q. And was there an instant messaging system  20 prior to Skype?  21 A. Yes.  22 Q. And what was that software?  23 A. That was called Lync, L-Y-N-C.  24 Q. And how long was Lync in effect?  25 A. I can't speculate. Several years.</p>
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<p>1 Notes e-mails were brought forward into the Microsoft  2 e-mail system?  3 A. No.  4 Q. You don't know, or the answer is no?  5 A. No, I don't know.  6 Q. Does each employee at Procter &amp; Gamble have a  7 dedicated e-mail address?  8 A. Generally speaking, yes.  9 Q. Are there any exceptions to that that you're  10 aware of?  11 A. One exception might be plant employees, for  12 example.  13 Q. Okay. But office employees would have a  14 dedicated e-mail address?  15 A. Yes, generally.  16 Q. Okay. Are office employees who have  17 computers allowed to create Outlook folders on their  18 computer for e-mail?  19 A. Yes.  20 Q. Can you explain to me if an employee deletes  21 an e-mail for whatever reason, whether or not that  22 e-mail can be retrieved from the server?  23 A. If an employee deletes an e-mail, it is  24 possible to recover that e-mail from the server.  25 Q. Okay. Do you know how far back in time you</p>	<p>1 Q. Any instant messaging prior to Lync that was  2 available for P&amp;G employees?  3 A. Prior to Lync, yes.  4 Q. And what was that?  5 A. If I remember, if memory serves me, that was  6 called Sametime.  7 Q. Do you know approximately how many total  8 years P&amp;G employees have had some form of instant  9 messaging?  10 A. Well, to the best of my knowledge, based on  11 when I arrived at P&amp;G, which was 2002, I would say at  12 least since 2002.  13 Q. Okay. Do you know if there are any systems  14 in place to retain instant messages at P&amp;G?  15 A. No.  16 Q. Again, my questions probably aren't clear.  17 Is that a no, there aren't such things, or no, you  18 don't know? I'm sorry my questions aren't well  19 phrased.  20 MR. SCHAEFER: No objection there.  21 A. There's no such thing.  22 Q. There's no such thing to maintain instant  23 messages?  24 A. That's correct.  25 Q. Do employees have the ability to print an</p>

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<p>1 instant message?</p> <p>2 A. Yes.</p> <p>3 Q. Does the instant messaging system allow for</p> <p>4 attachment of a document?</p> <p>5 A. The current one, yes.</p> <p>6 Q. And that would be Skype?</p> <p>7 A. Yes.</p> <p>8 Q. Can the instant messaging systems be set up</p> <p>9 to retain those messages at a server level?</p> <p>10 A. To the best of my recollection, no.</p> <p>11 Q. Let's talk about voice mail a second.</p> <p>12 Do the employees have access to voice mail on</p> <p>13 their phones in their offices?</p> <p>14 A. Generally speaking, yes.</p> <p>15 Q. Are those voice mail messages retained by a</p> <p>16 server?</p> <p>17 A. If the employee opts to have voice mail</p> <p>18 message, that is possible.</p> <p>19 Q. If an employee receives a voice message, they</p> <p>20 have the option to delete it at their phone, correct?</p> <p>21 A. My understanding is yes.</p> <p>22 Q. And if the employee deletes a voice mail, is</p> <p>23 there any way to retrieve that voice mail from a</p> <p>24 server?</p> <p>25 A. I can't speculate.</p>	<p>1 A. Do you mind showing me the document?</p> <p>2 Q. Sure. Number 4, I believe.</p> <p>3 A. Yes.</p> <p>4 Q. Thank you.</p> <p>5 What can you tell me that you're prepared to</p> <p>6 testify about concerning document management at P&amp;G?</p> <p>7 MR. SCHAEFER: Object to the form.</p> <p>8 A. It would help if you could clarify what you</p> <p>9 mean by "document management system."</p> <p>10 Q. Well, that's part of the problem, because</p> <p>11 that's -- strike that.</p> <p>12 What do you mean by "document management"?</p> <p>13 A. Well, it has many different interpretations.</p> <p>14 It could be a software called DocumentUp, or maybe</p> <p>15 you're talking about Microsoft Word and so forth. So I</p> <p>16 would like to understand what you are seeking.</p> <p>17 Q. Well, I'm trying to find out sources of</p> <p>18 materials relevant to the Prilosec OTC litigation.</p> <p>19 A. Well, to my knowledge, there is no</p> <p>20 enterprise-wide document management system.</p> <p>21 Q. I assume the employees use Word as a</p> <p>22 software, Microsoft Word?</p> <p>23 A. Yes.</p> <p>24 Q. PowerPoint?</p> <p>25 A. Yes.</p>
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<p>1 Q. You just don't know that answer; is that</p> <p>2 fair?</p> <p>3 A. Yes, that's fair.</p> <p>4 Q. What type of devices or computers are</p> <p>5 employees allowed to use? Are they desk models or are</p> <p>6 they laptops, or are they both?</p> <p>7 A. The recommended corporate model would</p> <p>8 typically be either a Dell or HP Windows PC.</p> <p>9 Q. So that's a desktop unit?</p> <p>10 A. No, that would be a laptop.</p> <p>11 Q. Okay. Are employees provided with any mobile</p> <p>12 device, such as iPads or phones?</p> <p>13 A. Employees can request a mobile device.</p> <p>14 Q. Do you have -- strike that.</p> <p>15 If an employee has a mobile device, can they</p> <p>16 send e-mails from their business account and receive</p> <p>17 e-mails from their business account?</p> <p>18 A. Yes. If their mobile phone is set up under</p> <p>19 Procter &amp; Gamble's policy and guidelines, yes.</p> <p>20 Q. If an employee sends or receives an e-mail on</p> <p>21 a mobile device, is that e-mail retained on the server?</p> <p>22 A. Yes.</p> <p>23 Q. One of the topics listed in the letter is</p> <p>24 document management including document retention.</p> <p>25 Are you aware of that?</p>	<p>1 Q. Excel?</p> <p>2 A. Yes.</p> <p>3 Q. Any other Microsoft products software that</p> <p>4 the employees have access to?</p> <p>5 A. Whatever is generally available through the</p> <p>6 Microsoft Office suite would be available to the</p> <p>7 employees.</p> <p>8 Q. How do -- employees who create a Word</p> <p>9 document, for example, where are those saved? What</p> <p>10 source are they saved in?</p> <p>11 A. The employees themselves have the option to</p> <p>12 make their determination or judgment as to where they</p> <p>13 want to save the document.</p> <p>14 Q. But I have to believe a company as large as</p> <p>15 P&amp;G has dedicated storage space for documents related</p> <p>16 to a product. Is that accurate?</p> <p>17 A. No, that's not accurate.</p> <p>18 Q. Well, if one wanted to find all of the</p> <p>19 marketing materials, for example, on Prilosec OTC, is</p> <p>20 there any particular source on the server that one</p> <p>21 would look at?</p> <p>22 A. It would depend what marketing documents</p> <p>23 you're looking for.</p> <p>24 Q. Any marketing related to Prilosec OTC. Let's</p> <p>25 start with TV ads.</p>

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<p style="text-align: right;">Page 30</p> <p>1 A. Well, if an employee is creating a document 2 related to TV ads, the employee could be saving it on a 3 hard drive. They could be saving it in another file 4 share solution. I can't speculate where the employee 5 might be saving it. 6 Q. Well, are there any policies or guidelines 7 for the P&amp;G employees on where to save certain types of 8 documents related to Prilosec OTC? 9 A. I can't speak to the guidelines or policies 10 where the employees save documents related to Prilosec. 11 I can speak to what P&amp;G recommends where they save 12 documents generally. 13 Q. Okay. Speak to that, then, please. 14 A. Okay. The employees may opt to save 15 documents on their computer on the hard drive, or they 16 are allowed to save documents on an external hard drive 17 device, like a USB drive, for example. Or they may -- 18 they're allowed to save documents in a repository, like 19 box.net or OneDrive, which is part of the Microsoft, or 20 SharePoint. And so I can speak to those at a high 21 level. 22 Q. Let's start with SharePoint. What kinds of 23 documents are maintained in SharePoint? 24 A. To the best of my knowledge, that would be 25 user-created documents.</p>	<p style="text-align: right;">Page 32</p> <p>1 retention policy? 2 A. Yes. 3 Q. You mentioned in your previous answer PII 4 data. What is that? 5 A. PII stands for personally identifiable 6 information, like a Social Security number, for 7 example, e-mail address. 8 Q. Okay. Let's go back to RRS, the record 9 retention policy. Is it at the discretion of the 10 employee whether to retain or delete a document? 11 A. Every employee is expected to comply with the 12 records retention policy and they're expected to follow 13 the retention schedule in RRS. So each employee 14 themselves are responsible for that. 15 Q. Well, for example, how long are employees 16 supposed to keep documents they create, for example, 17 something related to Prilosec OTC? 18 MR. SCHAEFER: I'll object. That's vague. 19 MR. DENTON: Well, it's vague because I don't 20 have the doggone policy in front of me. It should have 21 been brought and was requested. 22 A. I can't speculate because I don't know what 23 kind of data formats that are in the Prilosec that may 24 be subject to RRS. And like I said before, sir, RRS 25 lists out all sorts of different categories, from tax,</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Are there dedicated share drive spaces for 2 Prilosec OTC? 3 A. I don't know. 4 Q. Do you know who might be able to answer such 5 a question? 6 A. I can't recall. 7 Q. Is there a document retention policy at P&amp;G? 8 A. Yes. 9 Q. Do you know, at a high level, what that 10 policy is currently? 11 A. Yes. 12 Q. Could you tell us about that, please. 13 A. The policy is called the Records Retention 14 Schedule, RRS. And it is an interactive process that 15 allows the employee themselves who own the document to 16 identify how long they should keep the document, text, 17 for example, or PII data, based on other categories, as 18 well as depending on what it is subject to in terms of 19 local law in the country. 20 Q. Is that document retention program in 21 writing? Is that a policy that's written down? 22 A. Yes. 23 Q. Did you bring a copy of that with you? 24 A. No. 25 Q. Do you have access to a copy of the document</p>	<p style="text-align: right;">Page 33</p> <p>1 finance, PII and so forth. It's extremely numerous in 2 terms of categories. 3 Q. If we had a copy of the RRS policy here 4 today, you could answer these questions, couldn't you, 5 sir? 6 MR. SCHAEFER: I'll object. 7 A. To the best of my ability, I may be able to 8 answer that. 9 MR. DENTON: All right. Let's take a break. 10 (Recess taken.) 11 BY MR. DENTON: 12 Q. The Record Retention System policy, sir, did 13 you have any involvement in drafting that document? 14 A. No, I didn't. 15 And I would like to make one point of 16 clarification. I mentioned RRS as an interactive tool, 17 not a document, per se. It's a tool that guides the 18 employee through what is the appropriate retention 19 limit for their documents. 20 Q. So is the RRS printed or paper document in 21 any form? 22 A. No. It's an interactive tool, like I said 23 before, prior to the break. It's a website, and the 24 employee goes to the website and they click through 25 until they are able to identify how long they should</p>

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<p>1 keep a specific document type.</p> <p>2 Q. So this interactive software instructs the</p> <p>3 employee how long to keep a document based under the</p> <p>4 policy?</p> <p>5 A. Correct.</p> <p>6 Q. And is that interactive tool installed on all</p> <p>7 of the company computers?</p> <p>8 A. No, it's not.</p> <p>9 Q. How does the employee access the interactive</p> <p>10 software?</p> <p>11 A. They access one central website internally in</p> <p>12 the P&amp;G environment.</p> <p>13 Q. All right. So if I understand this, if an</p> <p>14 employee has a document that they create, they then</p> <p>15 would need to go to the interactive website to</p> <p>16 determine how long they are to retain such a document?</p> <p>17 MR. SCHAEFER: Object to form.</p> <p>18 A. If they are the owner of that document, then</p> <p>19 they are expected to be familiar with how long to keep</p> <p>20 that specific document type.</p> <p>21 Q. Okay. But the website is there for reference</p> <p>22 for them?</p> <p>23 A. Yes.</p> <p>24 Q. Is that a website created by P&amp;G?</p> <p>25 A. Yes.</p>	<p>1 A. As I previously mentioned, box.net, OneDrive,</p> <p>2 SharePoint. Those are the three common vehicles, so to</p> <p>3 speak, that allow employees to share files.</p> <p>4 Q. Do various file shares have domain names,</p> <p>5 such as Prilosec OTC/regulatory, as an example?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. How would an employee working on Prilosec</p> <p>8 know where to find a file to share it with another</p> <p>9 colleague?</p> <p>10 A. In that group of individuals, they would</p> <p>11 know. But I can't speculate as to what they might --</p> <p>12 what that name might be.</p> <p>13 Q. Well, if one was going to go collect all of</p> <p>14 the marketing documents on Prilosec OTC, where would</p> <p>15 one go to find them in the P&amp;G systems?</p> <p>16 A. In a case like that, the first step would be</p> <p>17 to work with the employees and ask them where they</p> <p>18 store their documents, identify it. But until then, I</p> <p>19 can't speculate.</p> <p>20 Q. All right. So you'd have to ask the</p> <p>21 employees assigned to that project first. Is that</p> <p>22 fair?</p> <p>23 A. Yes.</p> <p>24 Q. And how would you, as an e-discovery project</p> <p>25 manager, know which employees to go visit with?</p>
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<p>1 Q. Is there a particular name for that website?</p> <p>2 A. Yes.</p> <p>3 Q. What's the name?</p> <p>4 A. To the best of my memory, the name is</p> <p>5 recordsretentionschedule.PG.com, or it might be</p> <p>6 recordsretention.PG.com.</p> <p>7 Q. Okay. And I assume that website is only</p> <p>8 available to P&amp;G employees.</p> <p>9 MR. SCHAEFER: Object to form.</p> <p>10 A. Yes.</p> <p>11 Q. All right.</p> <p>12 MR. DENTON: Let's mark this as Exhibit 2.</p> <p>13 ---</p> <p>14 (Exhibit 2 marked.)</p> <p>15 ---</p> <p>16 BY MR. DENTON:</p> <p>17 Q. Sir, I have handed you Exhibit 2, which is a</p> <p>18 letter from counsel to me.</p> <p>19 Have you seen this letter before?</p> <p>20 A. Yes, this looks familiar.</p> <p>21 Q. Okay. Just to help us stay oriented, I want</p> <p>22 to talk to you about Number 5, file sharing. Okay?</p> <p>23 A. (Nods head.)</p> <p>24 Q. What software or systems are used at P&amp;G that</p> <p>25 allows employees to have file sharing?</p>	<p>1 A. That would be at the direction of counsel.</p> <p>2 Q. How do you identify which employees in P&amp;G</p> <p>3 worked on Prilosec OTC? How do you go about doing</p> <p>4 that?</p> <p>5 MR. SCHAEFER: I'll object. That's beyond</p> <p>6 the scope and the witness' answers are not speaking for</p> <p>7 the company.</p> <p>8 BY MR. DENTON:</p> <p>9 Q. Go ahead and answer.</p> <p>10 A. Again, that would be at the direction of</p> <p>11 counsel.</p> <p>12 Q. I didn't ask you -- I'm sorry. Sorry I</p> <p>13 interrupted.</p> <p>14 A. To clarify, P&amp;G has over 100,000 employees,</p> <p>15 and I would have to work with counsel to identify which</p> <p>16 employees are involved with Prilosec, and then at the</p> <p>17 direction of counsel, I would be instructed to</p> <p>18 interview them.</p> <p>19 Q. Okay. Have you done that in Prilosec OTC,</p> <p>20 interviewed employees?</p> <p>21 MR. SCHAEFER: I'll object. Instruct not to</p> <p>22 answer. Calls for information that's work product.</p> <p>23 BY MR. DENTON:</p> <p>24 Q. How many employees currently at P&amp;G have</p> <p>25 involvement with Prilosec OTC, an approximate number,</p>

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<p style="text-align: right;">Page 38</p> <p>1 please?</p> <p>2 MR. SCHAEFER: I'll object. Beyond the</p> <p>3 scope. The answer is not binding on the company.</p> <p>4 MR. DENTON: Understood. But he can answer.</p> <p>5 A. I don't know.</p> <p>6 Q. You've been involved in that work, haven't</p> <p>7 you?</p> <p>8 A. With what work?</p> <p>9 Q. As written in your paper, your job is to</p> <p>10 collect, preserve, and maintain data for litigation.</p> <p>11 Correct?</p> <p>12 A. Yes, that's right.</p> <p>13 Q. Has that been your role in the Prilosec OTC</p> <p>14 litigation?</p> <p>15 A. That's one of my expected responsibilities</p> <p>16 that I'm expected to carry out, yes.</p> <p>17 Q. And have you done so to date on the Prilosec</p> <p>18 OTC litigation?</p> <p>19 MR. SCHAEFER: Object. Instruct the witness</p> <p>20 not to answer. Calls for information that's work</p> <p>21 product regarding ongoing discovery in this litigation.</p> <p>22 Outside the scope of the 30(b)(6).</p> <p>23 MR. DENTON: I don't know how the heck it can</p> <p>24 be privileged information when he's published a paper</p> <p>25 in the public domain on this document.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. SCHAEFER: I'll object.</p> <p>2 Q. Go ahead.</p> <p>3 A. Yes.</p> <p>4 Q. And the reason you're not answering is based</p> <p>5 upon instruction of counsel, correct?</p> <p>6 MR. SCHAEFER: Object.</p> <p>7 A. That's right.</p> <p>8 Q. Let's go back to Exhibit 2, Number 6,</p> <p>9 employee data storage.</p> <p>10 What can you tell me about employee data</p> <p>11 storage at P&amp;G with respect to the Prilosec OTC</p> <p>12 litigation?</p> <p>13 MR. SCHAEFER: Object as vague.</p> <p>14 A. I can't speculate to what the employees may</p> <p>15 have done to store data related to Prilosec. P&amp;G</p> <p>16 employees have the option themselves to make the -- at</p> <p>17 their discretion, as I said before, as to how they want</p> <p>18 to save their data.</p> <p>19 Q. So it's just up to an individual employee,</p> <p>20 their personal discretion on how to store data related</p> <p>21 to Prilosec OTC. Am I right about that?</p> <p>22 MR. SCHAEFER: Object to form.</p> <p>23 A. Generally speaking, yes.</p> <p>24 Q. What are the options employees have to store</p> <p>25 data?</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. SCHAEFER: Although I have a continuing</p> <p>2 objection to the document you're referring to, that is</p> <p>3 an item that is under, what, Guidance Software, and</p> <p>4 it's some years old, and it's an article of general</p> <p>5 interest, not specific to Procter &amp; Gamble policies.</p> <p>6 It's not a Procter &amp; Gamble document.</p> <p>7 MR. DENTON: It's actually a document that</p> <p>8 this witness wrote.</p> <p>9 MR. SCHAEFER: That's correct. But he's here</p> <p>10 today as a 30(b)(6) witness.</p> <p>11 MR. DENTON: Correct. And actually he wrote</p> <p>12 in this article that his role as a 30(b)(6) witness is</p> <p>13 to be able to testify on what steps were done to</p> <p>14 collect, preserve, and maintain data in the litigation.</p> <p>15 And my simple question here today is: Has he done that</p> <p>16 in the Prilosec OTC litigation? That can't possibly be</p> <p>17 privileged.</p> <p>18 MR. SCHAEFER: My objection stands. Instruct</p> <p>19 the witness not to answer about his participation in</p> <p>20 the discovery process of this litigation.</p> <p>21 BY MR. DENTON:</p> <p>22 Q. But for objections of your counsel, could you</p> <p>23 tell us what steps you took to collect, preserve, and</p> <p>24 maintain data in the Prilosec OTC litigation? Are you</p> <p>25 capable of answering that question?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. The options are, as I mentioned before, by</p> <p>2 saving data, they can save on a back-up device or USB</p> <p>3 drive, they may save at box.net, OneDrive, SharePoint,</p> <p>4 or they may save in another system identified in that</p> <p>5 business or department. So -- and that may be</p> <p>6 required, and we would have to interview the employee</p> <p>7 themselves to find out where they saved their data.</p> <p>8 Q. Box.net, can you tell me what that is,</p> <p>9 please.</p> <p>10 A. Yes. It's a cloud software, and it's where</p> <p>11 you can upload documents to a file share repository</p> <p>12 that you can access either from your computer or</p> <p>13 another location, and you can save files for yourself</p> <p>14 or you can set up a folder that is shared with other</p> <p>15 people.</p> <p>16 Q. All right. And is it the employees'</p> <p>17 discretion as to whether or not to create a share space</p> <p>18 in box.net?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Do the various departments have different</p> <p>21 policies for employee data storage?</p> <p>22 A. The only restriction I'm aware of is that you</p> <p>23 can't store highly restricted data in box.net.</p> <p>24 Q. And can you define what "highly restricted</p> <p>25 data" is.</p>

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<p>1 A. That is a classification determined by the</p> <p>2 business -- each business as to how they define "highly</p> <p>3 restricted."</p> <p>4 Q. When you refer to the term "business," is</p> <p>5 that a department or is that a product? What do you</p> <p>6 mean, "by the business"?</p> <p>7 A. "By the business" could mean a department or</p> <p>8 group or an organization.</p> <p>9 Q. All right. Do you know how many departments</p> <p>10 or businesses are involved with Prilosec OTC?</p> <p>11 MR. SCHAEFER: Okay. Beyond the scope.</p> <p>12 You may answer.</p> <p>13 A. No, I don't.</p> <p>14 Q. Can you give me your best approximation?</p> <p>15 MR. SCHAEFER: Object.</p> <p>16 A. I couldn't speculate.</p> <p>17 Q. Is it accurate that the various businesses or</p> <p>18 departments can have different policies concerning</p> <p>19 employee data storage?</p> <p>20 MR. SCHAEFER: Object to form.</p> <p>21 A. Yes, that is possible.</p> <p>22 Q. And where would one go to find out a</p> <p>23 particular data storage policy in a particular</p> <p>24 department or business?</p> <p>25 A. You may go to an internal website called</p>	<p>1 recordsretention.PG.com and others that are related to</p> <p>2 these topics.</p> <p>3 Q. All right. So if I understood that</p> <p>4 correctly, you reviewed certain documents to be able to</p> <p>5 answer questions that are related to the topics in</p> <p>6 Exhibit 2?</p> <p>7 MR. SCHAEFER: Object to form.</p> <p>8 A. Yes. At the direction of counsel, yes, on</p> <p>9 those topics.</p> <p>10 Q. But you have that information available to</p> <p>11 you independent of counsel, correct?</p> <p>12 MR. SCHAEFER: Object.</p> <p>13 A. I'm not sure I understand.</p> <p>14 Q. Well, for example, ITsolutions.PG, you can</p> <p>15 obtain that information without the assistance of</p> <p>16 counsel, correct?</p> <p>17 A. Yes.</p> <p>18 Q. The recordretentionsystem.PG.com, you can</p> <p>19 obtain and review that policy independent of counsel,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. As far as all of the materials that you</p> <p>23 review related to the topics in Exhibit 2, all of those</p> <p>24 materials you could have access to independent of</p> <p>25 counsel, correct?</p>
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<p>1 ITsolutions.PG.com, and they have a policy at a high</p> <p>2 level, what are the options for storing documents.</p> <p>3 Q. Is that a policy that could be printed on</p> <p>4 paper?</p> <p>5 A. I believe so.</p> <p>6 Q. All right. And I take it you did not bring a</p> <p>7 copy of IT Solutions with you to the deposition. Is</p> <p>8 that correct?</p> <p>9 MR. SCHAEFER: Object.</p> <p>10 A. No, I did not.</p> <p>11 Q. Did you bring any documents with you to the</p> <p>12 deposition?</p> <p>13 A. No, I did not.</p> <p>14 Q. Did you review any documents or electronic</p> <p>15 information to prepare for the deposition?</p> <p>16 A. Yes, I did.</p> <p>17 Q. What did you review?</p> <p>18 A. I reviewed this prior to the deposition</p> <p>19 (indicating).</p> <p>20 Q. Exhibit 2?</p> <p>21 A. Yes.</p> <p>22 Q. Anything else?</p> <p>23 A. I reviewed notes based on these topics,</p> <p>24 e-mails, voice mails, file shares. I reviewed</p> <p>25 policies, as I mentioned before, on ITsolutions.PG.com,</p>	<p>1 MR. SCHAEFER: Object to the form of the</p> <p>2 question.</p> <p>3 A. Not all of them, no.</p> <p>4 Q. Which ones would be -- which ones are you</p> <p>5 excluding?</p> <p>6 MR. SCHAEFER: I'll object and just instruct</p> <p>7 the witness to the extent that it calls for</p> <p>8 attorney-client privileged or attorney-client</p> <p>9 information, he isn't to answer.</p> <p>10 THE WITNESS: Am I supposed to answer?</p> <p>11 MR. SCHAEFER: If you can answer without</p> <p>12 revealing attorney work product or our privileged</p> <p>13 communications, you may respond.</p> <p>14 A. I don't believe I would be able to answer</p> <p>15 that without disclosing attorney-client privilege or</p> <p>16 work product.</p> <p>17 Q. Let's look at Number 9 on the second page.</p> <p>18 That topic states, policies regarding departing</p> <p>19 employees and their data.</p> <p>20 Do you see where I'm referring to?</p> <p>21 A. Yes, I do.</p> <p>22 Q. Are there written policies regarding</p> <p>23 departing employees and their data?</p> <p>24 A. Yes, there are.</p> <p>25 Q. Did you review those written policies in</p>

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<p>1 preparation for your deposition?</p> <p>2 A. No, I did not.</p> <p>3 Q. Are you aware of the policies regarding</p> <p>4 departing employees and their data?</p> <p>5 A. Yes, I am.</p> <p>6 Q. What is your source of knowledge concerning</p> <p>7 the policies regarding departing employees and their</p> <p>8 data?</p> <p>9 A. My source is a document and policy called the</p> <p>10 exit interview form.</p> <p>11 Q. And is that a written document?</p> <p>12 A. It is.</p> <p>13 Q. Did you review that in preparation for your</p> <p>14 deposition?</p> <p>15 A. No, I did not.</p> <p>16 Q. Do you have access to a copy of the exit</p> <p>17 interview form?</p> <p>18 A. I do.</p> <p>19 Q. What is the policy regarding departing</p> <p>20 employees and their data retention?</p> <p>21 A. The policy is that when an employee leaves,</p> <p>22 before leaving, either human resources, HR, or the</p> <p>23 employee's manager has to sit down with the employee</p> <p>24 and go through the exit interview. Some of that</p> <p>25 includes collecting their computer, PC, requesting</p>	<p>1 to a different product. What happens to their Prilosec</p> <p>2 OTC data that was on their computer?</p> <p>3 A. I couldn't speculate as to what happens to</p> <p>4 that data.</p> <p>5 Q. Let's go to Number 10 on the letter. ARGUS</p> <p>6 application for adverse event data.</p> <p>7 I take it, first of all, the database that's</p> <p>8 used for tracking data events is ARGUS.</p> <p>9 A. My understanding, yes.</p> <p>10 Q. Can you tell me when the ARGUS application</p> <p>11 was first put in place at P&amp;G.</p> <p>12 A. Unfortunately, I can't remember when it was</p> <p>13 first implemented, other than it has been a while.</p> <p>14 It's been there for some time.</p> <p>15 Q. Okay. The question I'm really trying to get</p> <p>16 at, do you know if there was a predecessor application</p> <p>17 that tracked adverse event data at P&amp;G?</p> <p>18 A. To the best of my knowledge, I don't know. I</p> <p>19 am familiar at a high level as to what ARGUS is, but</p> <p>20 not if there was a predecessor of the system.</p> <p>21 Q. Number 11, ePADex, what is that?</p> <p>22 A. It's an interactive process for approving</p> <p>23 artwork.</p> <p>24 Q. Is that unique to P&amp;G or is that a commercial</p> <p>25 software?</p>
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<p>1 their account be -- their IT account to be deactivated</p> <p>2 and so forth. All standard pro forma as part of</p> <p>3 closing out the employee.</p> <p>4 Q. Are departing employees, their e-mails,</p> <p>5 retained in any way?</p> <p>6 A. If they're not under legal hold, then no.</p> <p>7 Q. So if there is no legal hold in place and an</p> <p>8 employee leaves P&amp;G, there is no retention of any data</p> <p>9 on their computer?</p> <p>10 A. To the best of my knowledge, that's right.</p> <p>11 Q. And if there is a legal hold in place, what</p> <p>12 is the policy for departing employees?</p> <p>13 A. If there is a legal hold in place for the</p> <p>14 departing employee, one part on the checklist instructs</p> <p>15 the manager and for HR to send a standard e-mail to a</p> <p>16 specific account to ask if a person is under a legal</p> <p>17 hold. If the response is affirmative, then the</p> <p>18 computer and other corporate-owned devices are sent to</p> <p>19 that specific person for chain of custody.</p> <p>20 Q. So they're retained -- if there's a legal</p> <p>21 hold, the information is retained?</p> <p>22 A. Yes, that's right.</p> <p>23 Q. All right. Slightly different question.</p> <p>24 Let's say an employee is working on Prilosec OTC and</p> <p>25 then is -- doesn't leave the company but is reassigned</p>	<p>1 A. I don't know if it's commercial software, but</p> <p>2 it is used at P&amp;G.</p> <p>3 Q. And can you give me an example of what the</p> <p>4 ePADex application is used for at P&amp;G.</p> <p>5 A. At a high level, you can consider it a form</p> <p>6 of approval, where people submit artwork that goes</p> <p>7 through specific steps before it's finally approved for</p> <p>8 use in the business.</p> <p>9 Q. So various departments would have access to</p> <p>10 ePADex for their review?</p> <p>11 A. I believe so, yes.</p> <p>12 Q. Does that application allow the reviewer to</p> <p>13 make electronic notes or comments on the artwork?</p> <p>14 A. Could you say that again, please?</p> <p>15 Q. Does the ePADex application allow for a</p> <p>16 reviewer to make notes, comment, or edits in the</p> <p>17 artwork?</p> <p>18 A. As part of the approval process, I would</p> <p>19 imagine so, yes.</p> <p>20 Q. Are the notes, comments, and edits in ePADex</p> <p>21 retained?</p> <p>22 A. My understanding is the final product is</p> <p>23 retained. I can't speculate to whether that includes</p> <p>24 the notes or any comment.</p> <p>25 Q. You don't know for sure about ePADex --</p>

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<p>1 A. That's correct.</p> <p>2 Q. -- whether those notes are retained?</p> <p>3 A. That's right.</p> <p>4 Q. Number 12, claims managers. Number 12. What</p> <p>5 is a claims manager, as referred to here?</p> <p>6 A. The claims manager is part of a process</p> <p>7 similar to HCPA and STEAM, where that all is involved</p> <p>8 with holding the final results of the promotional</p> <p>9 materials. EPADex, for example, as I mentioned, part</p> <p>10 of the approval process, the final result, as I</p> <p>11 understand it, falls into HCPA/STEAM.</p> <p>12 Q. Can you explain what those applications are,</p> <p>13 HCPA and STEAM.</p> <p>14 A. HCPA and STEAM are almost the same. The two</p> <p>15 words are used interchangeably.</p> <p>16 Q. But what is the purpose of HCPA/STEAM?</p> <p>17 A. My understanding is it's to hold the final</p> <p>18 output of what the promotional materials are and have</p> <p>19 been approved for the business use.</p> <p>20 Q. Okay. So it would be -- for example, in</p> <p>21 Prilosec OTC, HCPA/STEAM would hold the final</p> <p>22 promotional materials for Prilosec OTC, correct?</p> <p>23 MR. SCHAEFER: Object to form.</p> <p>24 A. I would imagine so, yes.</p> <p>25 Q. All right. Is there any application or</p>	<p>1 Prilosec OTC been stored with DXC?</p> <p>2 A. I don't know.</p> <p>3 Q. Do you have any approximation of that time</p> <p>4 frame?</p> <p>5 A. I do not.</p> <p>6 Q. Was that -- did the DXC store the regulatory</p> <p>7 documents on Prilosec OTC since you became the</p> <p>8 e-discovery person in 2008?</p> <p>9 A. I don't know.</p> <p>10 Q. Who has access -- what employees at P&amp;G have</p> <p>11 access to the regulatory information that is housed by</p> <p>12 DXC?</p> <p>13 A. I don't know who would have access to those</p> <p>14 folders.</p> <p>15 Q. Is there a regulatory department or business</p> <p>16 at P&amp;G here in Cincinnati?</p> <p>17 A. There is.</p> <p>18 Q. Is there a person in charge of that document?</p> <p>19 A. I don't know who is in charge specifically of</p> <p>20 that.</p> <p>21 Q. Who is your contact in the regulatory</p> <p>22 department here in Cincinnati for P&amp;G?</p> <p>23 A. One of my contacts would be Vicki Schofield,</p> <p>24 if I have any questions.</p> <p>25 MR. DENTON: Could you have him spell her</p>
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<p>1 storage area for draft promotional materials?</p> <p>2 A. The only other application that I'm familiar</p> <p>3 with for artwork is ePADex, and that's it.</p> <p>4 Q. All right. Is there a file share or database</p> <p>5 or some storage facility for regulatory documents</p> <p>6 related to Prilosec OTC?</p> <p>7 A. Yes.</p> <p>8 Q. Where are those documents stored, regulatory</p> <p>9 documents for Prilosec OTC?</p> <p>10 A. My understanding is that the template</p> <p>11 policies and procedures are stored in box.net in a</p> <p>12 folder.</p> <p>13 Q. All right. What about the communications</p> <p>14 with FDA concerning Prilosec OTC, where is that</p> <p>15 information stored?</p> <p>16 A. I don't know where the communications are</p> <p>17 stored that are handled by -- that's handled by an</p> <p>18 outside vendor.</p> <p>19 Q. Let me see if I understood your answer. The</p> <p>20 regulatory communications with FDA concerning Prilosec</p> <p>21 OTC are retained and stored with an outside vendor?</p> <p>22 A. Yes.</p> <p>23 Q. What is the name of the vendor?</p> <p>24 A. DXC.</p> <p>25 Q. How long has regulatory documents related to</p>	<p>1 last name for the record?</p> <p>2 A. To the best of my ability.</p> <p>3 S-C-H-O-F-I-E-L-D.</p> <p>4 Q. And who is your contact if you had any</p> <p>5 questions concerning marketing materials for Prilosec</p> <p>6 OTC?</p> <p>7 A. I'm sorry. I can't remember.</p> <p>8 Q. Who is your contact concerning the ARGUS</p> <p>9 application for adverse event data?</p> <p>10 A. My contact would be Michael. I believe his</p> <p>11 last time name is Steinbauch. I may have -- I'm not</p> <p>12 sure of the spelling. S-T-E-I-N-B-A-U-C-H.</p> <p>13 Q. Who is your contact with ePADex application?</p> <p>14 A. I can't recall.</p> <p>15 Q. What about HCPA/STEAM, who is your contact</p> <p>16 there for the promotional materials?</p> <p>17 A. The only person that I can remember by first</p> <p>18 name is Rose, but I can't remember the last name.</p> <p>19 Q. Let's go to Paragraph 13. Enovia and CSS</p> <p>20 corporate systems of record. Can you explain to me</p> <p>21 what those systems are?</p> <p>22 A. Yes. If I recall, to the best of my</p> <p>23 ability -- I'm sorry. I can't remember. I don't want</p> <p>24 to speculate and give you the wrong answer.</p> <p>25 Q. All right. Did you review any materials</p>

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<p>1 concerning Enovia and CSS corporate system records in 2 preparation for the deposition? 3 A. At the direction of counsel, I did. 4 Q. And you didn't bring -- if you had those 5 documents in front of you, would that refresh your 6 recollection and allow you to testify about Enovia and 7 CSS corporate systems of record? 8 MR. SCHAEFER: Object. Mischaracterizes the 9 testimony. 10 A. Yes. 11 Q. Were you instructed not to bring any 12 documents to the deposition? 13 MR. SCHAEFER: Object. Instruct the witness 14 not to answer. Calls for information that's 15 privileged, work product. 16 Q. Let's go to Number 14, the Kardia application 17 and C3DB system for consumer relations data. Can you 18 explain those systems to me. 19 A. Yes. Kardia is part of the ecosystem with 20 ARGUS, and so what it holds includes adverse data, as 21 well as other data. And Kardia also feeds into ARGUS. 22 Q. Okay. As an example, if a customer calls in 23 and makes a complaint about a product, is that recorded 24 in Kardia? 25 A. It is.</p>	<p>1 Q. But you're not personally familiar, are you? 2 A. That's correct. 3 Q. Number 15, what is DRS? 4 A. It's the same thing. It's used 5 interchangeably with Salesforce, and it's used for 6 professional sales data. 7 Q. And what do you mean by "professional sales 8 data"? 9 A. My understanding is that it's a software, at 10 a high level, that keeps track of the sales made. 11 Q. In the Prilosec OTC, we're talking about an 12 over-the-counter product. Do you know what type of 13 sales data is tracked in DRS related to Prilosec OTC? 14 A. No, I do not. 15 Q. Who would be your contact concerning DRS? 16 A. My contact was a person named Jeff Knapp, 17 K-N-A-P-P. 18 Q. And do you think he would be able to answer 19 questions concerning the type of sales data tracked in 20 DRS related to Prilosec OTC? 21 A. Yes. He's my known contact for Salesforce. 22 Q. Let's go back to Page 1, Number 8, business 23 use of mobile devices. What can you tell me about the 24 policy at P&amp;G concerning business use of mobile 25 devices?</p>
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<p>1 Q. Is that information retained? 2 A. I don't know if it is retained, but it is 3 entered into Kardia. 4 Q. Is Kardia a database? 5 A. It is a database, yes. 6 Q. And the input -- the data that's inputted 7 into Kardia, what is the retention policy, if you know? 8 A. I don't know. 9 Q. If you wanted to find an answer to that 10 question, who would you talk to? 11 A. It would be either Michael Steinbauch related 12 to the adverse data and Kardia, and Rose, the last name 13 I don't know. 14 Q. Okay. Is C3DB system different from Kardia? 15 A. Yes. Well, I'm not familiar with C3DB. 16 Q. Okay. In the Kardia application, is there a 17 way to filter the data for the types of information the 18 consumer reports? 19 A. I'm not familiar with how Kardia is set up 20 internally, so I can't speculate as to how the filter 21 may work. 22 Q. Do you know if Kardia is searchable, the data 23 within it? 24 A. As it is a database, it's fair to say that it 25 has some search capability.</p>	<p>1 A. Generally speaking, employees may have a 2 corporate-owned mobile phone or they may have -- they 3 may use their own mobile, called BYOM. 4 Q. Is there any software available to collect 5 the voice messages on mobile devices? 6 A. Generally speaking, there are some softwares 7 out there that can do that if you have the phone in 8 physical possession. 9 Q. So if I would hand you my phone, is there 10 software available for you to retrieve my voice 11 messages? 12 MR. SCHAEFER: I'll object. It's beyond the 13 scope of the notice, and the witness' responses about 14 what you can buy to do that are not speaking for the 15 corporation. 16 MR. DENTON: All right. He can speak for 17 himself. 18 BY MR. DENTON: 19 Q. Go ahead. 20 A. There are commercial softwares out there that 21 could be able to do what you're asking. 22 Q. Does P&amp;G use any such software? 23 A. We have a mobile forensic software for mobile 24 phones, and as to whether or not that software can 25 handle voice mail or messages, I can't be sure.</p>

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<p>1 Q. What is the forensic mobile software used for</p> <p>2 at P&amp;G?</p> <p>3 A. The forensic mobile software is Cellebrite,</p> <p>4 C-E-L-L-E-B-R-I-T-E.</p> <p>5 Q. And what is it used for?</p> <p>6 A. It's used to take a forensic image of the</p> <p>7 mobile phone and then do analysis on the different</p> <p>8 artifacts that are found on the mobile phone.</p> <p>9 Q. Do the employees at P&amp;G have any dedicated</p> <p>10 file share space on a server that's unique to their</p> <p>11 name?</p> <p>12 A. Yes.</p> <p>13 Q. Do all employees have that, if they work in</p> <p>14 the office?</p> <p>15 A. Generally speaking, yes.</p> <p>16 Q. And where is that information retained on the</p> <p>17 file share? Is that at the server level?</p> <p>18 A. That would be retained in either box.net or</p> <p>19 OneDrive, where each employee has their own designated</p> <p>20 space.</p> <p>21 Q. All right. So if I happen to work for P&amp;G</p> <p>22 and I was in the office, I would have a file share in</p> <p>23 my name, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And what types of documents can be stored in</p>	<p>1 hold, how are those storage options maintained?</p> <p>2 A. If they're subject to a hold, then they are</p> <p>3 expected to preserve the data and to comply with the</p> <p>4 instructions sent out in the legal hold.</p> <p>5 Q. So each employee is to follow what is</p> <p>6 communicated to them on an individual basis?</p> <p>7 A. Yes, between them and counsel.</p> <p>8 MR. DENTON: I think it's time to take a</p> <p>9 short break.</p> <p>10 Maybe you want to take a quick lunch?</p> <p>11 MR. SCHAEFER: We can do lunch, sure.</p> <p>12 MR. DENTON: Is that okay?</p> <p>13 MR. SCHAEFER: Sure.</p> <p>14 ---</p> <p>15 Thereupon, the luncheon recess</p> <p>16 was taken at 11:55 a.m.</p> <p>17 ---</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 file share?</p> <p>2 A. Standard user-created documents. For</p> <p>3 example, Microsoft Word, PDFs, Excel, images and so</p> <p>4 forth.</p> <p>5 Q. What about e-mails, can you store e-mails in</p> <p>6 your file share?</p> <p>7 A. As an archive or individual e-mail message,</p> <p>8 you could do that.</p> <p>9 Q. So if I have this correctly, an employee</p> <p>10 could store data on their own hard drive, correct?</p> <p>11 MR. SCHAEFER: Object to form.</p> <p>12 You may answer.</p> <p>13 A. An employee can save data on the local --</p> <p>14 their local hard drive, yes.</p> <p>15 Q. What I refer to the C drive?</p> <p>16 A. Yes.</p> <p>17 Q. They could store data on removable devices,</p> <p>18 like a USB?</p> <p>19 A. Yes.</p> <p>20 Q. They could store data in their file share?</p> <p>21 A. Yes. If they have their own account, yes.</p> <p>22 Q. As a general rule, office employees have a</p> <p>23 share file in their own name?</p> <p>24 A. As a general rule, yes.</p> <p>25 Q. If an employee is subject to a litigation</p>	<p>1 January 31, 2018</p> <p>2 Wednesday Afternoon Session</p> <p>3 12:45 p.m.</p> <p>4 ---</p> <p>5 THE WITNESS: Before we begin, I want to take</p> <p>6 a moment to make a point of clarification. Before, I</p> <p>7 was under the gun and couldn't remember what Enovia and</p> <p>8 CSS were, and I do recall Kardia feeds into Enovia.</p> <p>9 And so Enovia is the system of record, and Kardia feeds</p> <p>10 into Enovia once a day. And, if memory serves me, C3DB</p> <p>11 is an older system that was replaced by Kardia.</p> <p>12 Also, when we were talking about -- during my</p> <p>13 testimony, point of clarification, we were talking</p> <p>14 about the regulatory materials, and one of your</p> <p>15 questions asked of me was how long had that electronic</p> <p>16 filing been in place, and I said that I couldn't</p> <p>17 remember. And I do recall that it was -- started in</p> <p>18 2008. The contact person is the same. Her name is</p> <p>19 Vicki Schofield.</p> <p>20 And the last point of clarification, DRS and</p> <p>21 Salesforce, I mentioned -- previously I said that it's</p> <p>22 sales data, but I wasn't sure if I was clear on that.</p> <p>23 It is -- could be easily mistakenly interpreted. And</p> <p>24 so just to clarify, it's sales data, not the actual</p> <p>25 number of sales, but the sales rep, for example, the</p>

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<p style="text-align: right;">Page 62</p> <p>1 calls they make, the doctors. Just at a very high 2 level, they're sales calls. 3 So hopefully that's helpful. 4 MR. DENTON: Thank you. 5 THE WITNESS: And that's it. 6 MR. DENTON: All right. 7 BY MR. DENTON: 8 Q. Let's follow up on the sales call 9 information. Would that be where sales reps keep call 10 notes when they visit with a physician? 11 A. I don't know. The main contact would 12 continue to be Jeff Knapp. He would know the answer to 13 that. 14 Q. All right. So if I understood your 15 clarification, the regulatory files in DXC, that vendor 16 started in about 2008? 17 A. Yes, that's right. 18 Q. And do you know where regulatory documents 19 are stored that were created before 2008 for Prilosec 20 OTC? 21 A. As I recall, I believe that was handled 22 electronically, but as for the name of the repository 23 or tool solution, no, I don't recall. I don't know. 24 Q. All right. Thank you. 25 Let me talk to you about your various work</p>	<p style="text-align: right;">Page 64</p> <p>1 lawyer at P&amp;G, or has your role been in the information 2 technology field? 3 A. My role has been in the area of information 4 technology. 5 Q. All right. To be clear, you do not provide 6 legal advice to P&amp;G employees, correct? 7 MR. SCHAEFER: Object. 8 A. Right. 9 Q. Let's talk about your role when you started 10 the electronic discovery area. What is it that you did 11 for P&amp;G in that area? 12 A. My role when I started to develop the 13 electronic discovery service was to allow the attorneys 14 to be compliant with the Federal Rules of Civil 15 Procedure. 16 Q. Okay. And how did you know about the Federal 17 Rules of Civil Procedure? Was that part of your law 18 training? 19 A. That was part of my law training, as well as 20 P&amp;G training. 21 Q. And take us through the various tasks that 22 you have done to develop the e-discovery system 23 in-house for P&amp;G. 24 MR. SCHAEFER: Object to form. 25 A. At a high level, it was about making sure</p>
<p style="text-align: right;">Page 63</p> <p>1 duties at P&amp;G over time. When did you first start for 2 P&amp;G? 3 A. I started approximately 2002. 4 Q. And what title or role did you have at that 5 time? 6 A. My title was systems analyst. 7 Q. And generally, what type of work did you 8 perform? 9 A. In the beginning, I was responsible for 10 infrastructure support and R&amp;D. 11 Q. All right. When did your job duties or 12 responsibilities change after 2002? 13 A. When I transferred to a new role in 2004, I 14 became more involved in programming and application 15 software support. And that was when the role -- my 16 role started to change. 17 Q. All right. When -- what's the next role you 18 had after 2004? 19 A. After 2004, my next role started in 2006, 20 2007, when I became involved in developing electronic 21 discovery service. 22 Q. Okay. When did you obtain your law degree? 23 A. I graduated in the spring of 2008. 24 Q. All right. Any of the -- let me ask you 25 this: Have you ever performed work as an in-house</p>	<p style="text-align: right;">Page 65</p> <p>1 that we had the necessary tools and processes that 2 would allow us to, one, be -- to conform to the 3 framework established by the US Supreme Court, which is 4 to preserve and identify electronic data, as well as 5 whether or not we can demonstrate that we are following 6 the Electronic Discovery Reference Model, or the EDRM. 7 Q. When did you start that again? 8 A. That was approximately around 2006, 2007. 9 No. If I recall, the US Supreme Court released the 10 amendment in 2008, so that must have been -- I started 11 working on that in 2008. That would make sense. 12 Q. All right. And I'm trying to understand. 13 What reference to the United States Supreme Court are 14 you referring to? 15 A. The Federal Rules of Civil Procedure. 16 Q. So did it become a full-time job at P&amp;G for 17 you to make sure the e-discovery in-house complied with 18 the Federal Rules of Civil Procedure in 2008? 19 A. Yes, it did become a full-time job. 20 Q. Is that still your job? 21 A. It is still part of my job duties. 22 Q. Okay. So you've been doing this seven to 23 eight years, correct, this particular role? 24 A. Approximately that, yes. 25 Q. So as I understand it, one of your duties,</p>

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<p style="text-align: right;">Page 66</p> <p>1 generally, has been to identify and collect and</p> <p>2 preserve electronic discovery in-house for P&amp;G for the</p> <p>3 various litigations. True?</p> <p>4 A. Yes.</p> <p>5 Q. Has that been your role in the Prilosec OTC</p> <p>6 litigation?</p> <p>7 A. Yes, that is part of my job duty that I'm</p> <p>8 expected to do at the direction of counsel.</p> <p>9 Q. Okay. So just to be clear, in the Prilosec</p> <p>10 OTC litigation, your job, in part, is to identify and</p> <p>11 supervise and collect sources of electronic data that</p> <p>12 could be relevant to this litigation, true?</p> <p>13 THE WITNESS: Do you mind repeating the</p> <p>14 question, please?</p> <p>15 (Record read as requested.)</p> <p>16 A. Yes.</p> <p>17 Q. And have you done so?</p> <p>18 A. No, I haven't.</p> <p>19 Q. Why not?</p> <p>20 MR. SCHAEFER: Object. I've let you question</p> <p>21 him on this area a little bit so that we could give you</p> <p>22 some information, but at this point, you're, again,</p> <p>23 going into areas that involve Mr. Van Nice's interface</p> <p>24 with outside counsel and legal department of P&amp;G in the</p> <p>25 ongoing conduct of discovery in this case.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. All right. When did that change take place?</p> <p>2 A. Roughly around October or September of 2017.</p> <p>3 Q. Is there currently an e-discovery manager</p> <p>4 assigned to the Prilosec OTC at P&amp;G?</p> <p>5 A. Yes.</p> <p>6 Q. What is that person's name?</p> <p>7 A. That would be me.</p> <p>8 Q. Okay. So the combination of Lisa and you</p> <p>9 have served as the project director for the e-discovery</p> <p>10 of the Prilosec OTC litigation, true?</p> <p>11 MR. SCHAEFER: Object to form.</p> <p>12 A. Yes, that's right.</p> <p>13 Q. When did Lisa join P&amp;G in the e-discovery</p> <p>14 department?</p> <p>15 MR. SCHAEFER: Object. That's beyond the</p> <p>16 scope of the 30(b)(6) notice.</p> <p>17 If the witness has knowledge, he can answer.</p> <p>18 A. Lisa joined electronic discovery service</p> <p>19 under my supervision in 2012.</p> <p>20 Q. And did Lisa work in e-discovery under your</p> <p>21 supervision until she left in September or October of</p> <p>22 2017?</p> <p>23 MR. SCHAEFER: Same objection. If I could</p> <p>24 have a continuing objection with respect to questions</p> <p>25 about employee titles and responsibilities in the</p>
<p style="text-align: right;">Page 67</p> <p>1 So to the extent that you're asking what he</p> <p>2 has done in this litigation to date, I'm going to tell</p> <p>3 him not to answer and you can proceed.</p> <p>4 MR. DENTON: We respectfully disagree with</p> <p>5 that. I'm not asking advice of counsel, what he was</p> <p>6 told or not to do. I'm just asking for his actions.</p> <p>7 I'm going to ask it a different way and see if we can</p> <p>8 get an answer.</p> <p>9 BY MR. DENTON:</p> <p>10 Q. In the Prilosec OTC litigation, have you been</p> <p>11 involved in the identification of sources of</p> <p>12 electronically stored information?</p> <p>13 A. No, I have not.</p> <p>14 Q. Has some other employee in P&amp;G been doing</p> <p>15 that?</p> <p>16 A. Yes, there is another employee.</p> <p>17 Q. And what is that individual's name?</p> <p>18 A. That person's name is Lisa Schaerer.</p> <p>19 Q. Can we get a spelling?</p> <p>20 A. S-C-H-A-R-E-R (sic). And that may be</p> <p>21 misspelled.</p> <p>22 Q. And what is Lisa Schaerer's title?</p> <p>23 A. She now has been moved to a new role in</p> <p>24 project management. So she is no longer with</p> <p>25 electronic discovery service.</p>	<p style="text-align: right;">Page 69</p> <p>1 e-discovery area. Can I have a continuing objection?</p> <p>2 MR. DENTON: Sure, you can. Yeah.</p> <p>3 MR. SCHAEFER: All right.</p> <p>4 MR. DENTON: But he can answer the question</p> <p>5 if he has knowledge?</p> <p>6 MR. SCHAEFER: I haven't instructed him not</p> <p>7 to.</p> <p>8 MR. DENTON: Right.</p> <p>9 A. Yes.</p> <p>10 BY MR. DENTON:</p> <p>11 Q. Is Lisa Schaerer still with P&amp;G, still an</p> <p>12 employee?</p> <p>13 A. To the best of my knowledge, yes.</p> <p>14 Q. Did anyone replace Lisa in your department</p> <p>15 when she left?</p> <p>16 A. No.</p> <p>17 Q. Are you the only e-discovery employee</p> <p>18 currently at Procter &amp; Gamble?</p> <p>19 A. Yes.</p> <p>20 Q. I want to go back to Exhibit 2, and I want to</p> <p>21 ask you if, in addition to databases and information</p> <p>22 contained in the letter, are you aware of any other</p> <p>23 databases that exist in the P&amp;G system that would have</p> <p>24 information relevant to the Prilosec OTC litigation?</p> <p>25 A. No. Other than the topics listed here, no.</p>

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<p>1 Q. All right. With respect to the Prilosec OTC 2 litigation, did Lisa identify the sources of 3 information within the company that would be relevant 4 to this litigation?</p> <p>5 A. To the best of my knowledge. She worked at 6 the direction of counsel, where counsel identified the 7 sources of information.</p> <p>8 Q. How would outside counsel know the sources of 9 information?</p> <p>10 MR. SCHAEFER: I'll object and instruct the 11 witness not to answer questions that are privileged or 12 work product. And I'll object to the form of that 13 question.</p> <p>14 Q. Let's go to Exhibit 1. First of all, I want 15 to try to help you with the date. You previously told 16 me you thought this was published in 2012, but I want 17 to refer you to Page 7. And it has some P&amp;G 18 e-discovery statistics, at least through the year 2014.</p> <p>19 Does that refresh your recollection, perhaps, 20 as to when you published Exhibit 1?</p> <p>21 MR. SCHAEFER: I'll just object since we're 22 after the break now with respect to questions about 23 Exhibit 1, the white paper, guidant, as I did before 24 the lunch break. This is a document that is beyond the 25 scope of the 30(b)(6). It's authored by Mr. Van Nice,</p>	<p>1 A. Based on this, I seem to be explaining about 2 how EnCase is a good fit because we use that for key 3 custodians. And by "key custodians," those are those 4 who we're actively collecting data.</p> <p>5 Q. Okay.</p> <p>6 A. So by custodian, again, I must be referring 7 to key custodians.</p> <p>8 Q. And a custodian would be an employee of 9 Procter &amp; Gamble who would have relevant information 10 concerning the litigation?</p> <p>11 MR. SCHAEFER: Object to form.</p> <p>12 A. That's the typical definition of a custodian, 13 yes.</p> <p>14 Q. Is that the definition you use when you talk 15 about custodians?</p> <p>16 A. Yes.</p> <p>17 Q. All right. Now, I want to go a little bit 18 further. You've identified an individual as a 19 custodian.</p> <p>20 Do you have a definition of what a custodial 21 file would contain?</p> <p>22 A. A what?</p> <p>23 Q. Do you use the term -- if you're collecting 24 data from a custodian that's been identified, what 25 information is collected?</p>
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<p>1 but it is not a Procter &amp; Gamble document, nor does it 2 speak for Procter &amp; Gamble practices or official 3 policies. If I can have a continuing objection on that 4 basis, then I will --</p> <p>5 MR. DENTON: You can have a continuing 6 objection, but I'd appreciate it if you'd quit 7 providing leading objections to the witness. I simply 8 asked him if that document refreshed his recollection 9 as to the date of this document. That was the only 10 question on the table.</p> <p>11 A. And related to which question?</p> <p>12 BY MR. DENTON:</p> <p>13 Q. I'm sorry. I'm just trying to see if 14 referencing Page 7 would help you identify the date of 15 the publication of Exhibit 1 since there is reference 16 therein to 2014 statistics at P&amp;G.</p> <p>17 MR. SCHAEFER: Object to form.</p> <p>18 A. Well, because I have the year here, 2014, it 19 would stand to reason that this was produced at least 20 in 2014 or 2015.</p> <p>21 Q. Okay. Fair enough.</p> <p>22 In looking at Page 7 and the statistics, you 23 used the term custodians, and you have numbers in that 24 column. What do you mean in this article -- how do you 25 define the term "custodian"?</p>	<p>1 A. If we identify a key custodian, collection 2 would include typical sources in the P&amp;G environment, 3 and that includes, for example, the person's computer, 4 the person's e-mail from the Microsoft Exchange, which 5 we talked about previously, and it could very well 6 include box.net, OneDrive, SharePoint. Again, what we 7 had talked about before.</p> <p>8 Q. Okay. What about external storage devices, 9 such as a USB stick?</p> <p>10 A. If counsel identifies that as part of their 11 follow-up, then yes.</p> <p>12 Q. Well, does your department interview the 13 employee to find out where they store relevant 14 information?</p> <p>15 A. Sometimes our department will do an 16 interview, but it's at the direction of counsel.</p> <p>17 Q. All right. What about if the employee has 18 paper documents that aren't in electronic form, do you 19 consider that part of the identification of relevant 20 information?</p> <p>21 A. No, we don't, because we don't handle paper 22 documents as part of the electronic discovery service. 23 The emphasis is on electronic.</p> <p>24 Q. Would you have access and information that 25 would identify which individuals P&amp;G has identified as</p>

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<p style="text-align: right;">Page 74</p> <p>1 custodians in the Prilosec OTC litigation?</p> <p>2 MR. SCHAEFER: Object.</p> <p>3 MR. DENTON: Just asking if he had access.</p> <p>4 MR. SCHAEFER: Could I have the court</p> <p>5 reporter read that one back?</p> <p>6 MR. DENTON: Sure.</p> <p>7 (Record read as requested.)</p> <p>8 A. Do you mind rephrasing that question? I'm</p> <p>9 not sure I follow.</p> <p>10 BY MR. DENTON:</p> <p>11 Q. Okay. You already told me that Lisa</p> <p>12 identified custodians for the Prilosec OTC and</p> <p>13 collected the information. True?</p> <p>14 MR. SCHAEFER: Object. Mischaracterizes</p> <p>15 testimony.</p> <p>16 A. Lisa did not identify the custodians. It was</p> <p>17 counsel that identified the custodians. Lisa worked at</p> <p>18 their direction.</p> <p>19 Q. But Lisa was involved in the collection and</p> <p>20 the preservation of the custodial files for this</p> <p>21 litigation?</p> <p>22 A. Lisa was involved in the preservation of the</p> <p>23 data.</p> <p>24 Q. So somewhere, Lisa had to have a list of</p> <p>25 names to preserve data, custodial names, correct?</p>	<p style="text-align: right;">Page 76</p> <p>1 related to the Prilosec OTC litigation?</p> <p>2 A. To my knowledge, no one was involved in the</p> <p>3 preservation or collection of databases.</p> <p>4 Q. In looking at Exhibit 1, your paper, Page 7,</p> <p>5 I'm looking down at these P&amp;G e-discovery statistics,</p> <p>6 do you have an approximation of how many custodians</p> <p>7 that P&amp;G has identified in the Prilosec OTC litigation?</p> <p>8 MR. SCHAEFER: Object. Instruct the witness</p> <p>9 not to answer. Once again, as in the case earlier,</p> <p>10 this is calling for information regarding his interface</p> <p>11 with the legal department and outside counsel about</p> <p>12 discovery in this litigation that's ongoing and, in</p> <p>13 many cases, is beginning. So this is work product and</p> <p>14 privileged information.</p> <p>15 I instruct him not to answer of his ongoing</p> <p>16 involvement with the collection of information and</p> <p>17 direction of in-house or outside counsel.</p> <p>18 Further, we're going to take a break at this</p> <p>19 point.</p> <p>20 MR. DENTON: Why? Who needs a break?</p> <p>21 MR. SCHAEFER: We do.</p> <p>22 MR. DENTON: For what?</p> <p>23 MR. GREEN: You're going far afield, Roger.</p> <p>24 You really are. You're digging in -- you're trying to</p> <p>25 violate privilege.</p>
<p style="text-align: right;">Page 75</p> <p>1 MR. SCHAEFER: Object. Beyond the scope of</p> <p>2 this deposition. If the witness can answer, he's not</p> <p>3 answering on behalf of the company.</p> <p>4 A. Do you mind repeating the question?</p> <p>5 Q. Lisa would have necessarily had a list of</p> <p>6 custodians to collect and preserve their data, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Do you currently have access to that same</p> <p>9 list of custodians?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have access to the list of databases</p> <p>12 that have been preserved and collected for the OTC</p> <p>13 litigation?</p> <p>14 A. No.</p> <p>15 Q. Do you know if anyone does have such a list?</p> <p>16 A. No.</p> <p>17 Q. Was Lisa involved in the preservation and</p> <p>18 collection of database information with respect to the</p> <p>19 Prilosec OTC litigation?</p> <p>20 MR. SCHAEFER: Object. Beyond the scope of</p> <p>21 the notice. Same objection previously.</p> <p>22 A. For database, no, Lisa was not involved in</p> <p>23 the preservation or collection.</p> <p>24 Q. Who was involved, if anyone, at P&amp;G for the</p> <p>25 collection and preservation of database information</p>	<p style="text-align: right;">Page 77</p> <p>1 MR. DENTON: I am not. You can instruct him.</p> <p>2 You can object. I can make my question. I'm not</p> <p>3 trying to do anything except make a record. You made</p> <p>4 your record. We'll let the Court figure it out.</p> <p>5 MR. GREEN: The questions about what's been</p> <p>6 done specifically in terms of document collection and</p> <p>7 custodians and all of that, in this -- with respect to</p> <p>8 Prilosec OTC is all privileged information.</p> <p>9 MR. DENTON: I absolutely disagree with you.</p> <p>10 MR. GREEN: Well, we disagree on that point.</p> <p>11 MR. DENTON: So why do we need to take a</p> <p>12 break?</p> <p>13 MS. FRIENT: We're taking a break. Thank</p> <p>14 you.</p> <p>15 MR. DENTON: Who are you? Are you counsel of</p> <p>16 record?</p> <p>17 MR. SCHAEFER: Roger, I'm counsel of record.</p> <p>18 I said we're taking a break. I said it and K.C. has</p> <p>19 said it. He's counsel of record.</p> <p>20 MR. DENTON: Okay. But I don't know who that</p> <p>21 is.</p> <p>22 MR. SCHAEFER: So that's what we're doing.</p> <p>23 MR. DENTON: I'm sorry you guys are so</p> <p>24 sensitive to the reality here of you not providing</p> <p>25 appropriate discovery.</p>

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<p>1 We will be, by the way -- don't leave yet --</p> <p>2 we are going to be filing a motion for sanctions to</p> <p>3 come back.</p> <p>4 Show that Counsel Schaefer shrugged his head</p> <p>5 and didn't offer to respond.</p> <p>6 MR. SCHAEFER: We're off the record.</p> <p>7 (Recess taken.)</p> <p>8 MR. SCHAEFER: Roger, I just want to put</p> <p>9 something on the record; that we took a break for</p> <p>10 counsel to confer. The witness was not present during</p> <p>11 that conference, and the conference was directed to the</p> <p>12 questioning in the deposition, trying to move us</p> <p>13 forward.</p> <p>14 And Mr. Van Nice is here as a 30(b)(6)</p> <p>15 witness. He's not been provided based upon his</p> <p>16 individual knowledge or his individual involvement in</p> <p>17 the ongoing conduct of discovery in this litigation.</p> <p>18 So to the extent you ask him questions that</p> <p>19 are involved with his individual participation, his</p> <p>20 past participation, or his current participation with</p> <p>21 inside and outside counsel, we'll continue to object</p> <p>22 and instruct the witness not to answer. If you can ask</p> <p>23 him questions involving Procter &amp; Gamble's practices</p> <p>24 and policies and what has taken place to date</p> <p>25 institutionally at Procter &amp; Gamble, that doesn't</p>	<p>1 that is work product and may or may not be privileged,</p> <p>2 but it most certainly is work product. And that's</p> <p>3 where we're drawing the line. If you ask him what he</p> <p>4 is doing, that's a different question than asking what</p> <p>5 P&amp;G has done.</p> <p>6 MR. DENTON: All right. I disagree, but</p> <p>7 we'll try to go forward.</p> <p>8 BY MR. DENTON:</p> <p>9 Q. This Exhibit 1, this paper you wrote around</p> <p>10 2014 and 2015, it has your name on here on the front,</p> <p>11 doesn't it, Scott Van Nice, e-discovery manager at P&amp;G,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And what you were putting in this white paper</p> <p>15 was a summary of what you did as an e-discovery manager</p> <p>16 at Procter &amp; Gamble, correct?</p> <p>17 A. No. This is a best -- to an extent, yes.</p> <p>18 This is a best practice, talking about how a person or</p> <p>19 team of two can handle electronic discovery at a</p> <p>20 Fortune 500 company.</p> <p>21 The intent behind this white paper was to</p> <p>22 demonstrate that e-discovery, the team doesn't have to</p> <p>23 be large. With the right tools and processes, it can</p> <p>24 be done.</p> <p>25 Q. And the white paper is describing what you</p>
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<p>1 implicate his personal testimony, then those questions</p> <p>2 are not objectionable or privileged.</p> <p>3 MR. DENTON: Well, I understand that things</p> <p>4 may cross over between 30(b)(6) and personal knowledge,</p> <p>5 and you can make that distinction, but this is a</p> <p>6 discovery deposition. It's relevant information. The</p> <p>7 gentleman clearly has a wealth of knowledge that he's</p> <p>8 not being allowed to testify about based on these</p> <p>9 objections that I would like to get on the record so we</p> <p>10 have information.</p> <p>11 I don't know what -- I don't believe that's a</p> <p>12 proper objection, I guess, is what I'm getting at. I'm</p> <p>13 not trying to and have not tried to invade the</p> <p>14 attorney-client privilege, although I disagree with</p> <p>15 some of your objections. I'm not asking him what</p> <p>16 counsel directed him to do. I'm not asking him about</p> <p>17 his communications with counsel. I'm asking about what</p> <p>18 he does in his job as e-discovery expert internally at</p> <p>19 P&amp;G.</p> <p>20 MR. SCHAEFER: Well, those questions, if</p> <p>21 that's what you were asking, would not be</p> <p>22 objectionable.</p> <p>23 MR. DENTON: That's correct.</p> <p>24 MR. SCHAEFER: If you're asking him what he's</p> <p>25 doing working with counsel with this litigation, then</p>	<p>1 actually did and still do at Procter &amp; Gamble as an</p> <p>2 e-discovery manager, true?</p> <p>3 A. Yes.</p> <p>4 Q. And just to be clear, this white paper was</p> <p>5 published on the internet for anyone to see if they</p> <p>6 chose to go find it like I did. Correct?</p> <p>7 A. My understanding is that it is now published</p> <p>8 on the internet, yes.</p> <p>9 Q. You didn't have any direction of legal</p> <p>10 counsel on what to put in this document, did you?</p> <p>11 A. This went through formal P&amp;G communications,</p> <p>12 received approval for publication.</p> <p>13 Q. Oh. So this Exhibit 1 that you prepared was</p> <p>14 approved by Procter &amp; Gamble before it was published?</p> <p>15 A. It was approved by P&amp;G communications.</p> <p>16 Q. And that was done before it was published on</p> <p>17 the internet?</p> <p>18 A. This was -- P&amp;G communications approved of</p> <p>19 this white paper, and that was the white paper itself.</p> <p>20 Q. Have you published any other articles</p> <p>21 concerning electronic discovery?</p> <p>22 A. No, I have not.</p> <p>23 Q. Let's go to Page 6 of the article. I want to</p> <p>24 reference you to this area right here, the Electronic</p> <p>25 Discovery Reference Model.</p>



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<p style="text-align: right;">Page 82</p> <p>1 Do you see that?</p> <p>2 A. Yes, I see that.</p> <p>3 Q. Generally, what part of that model does P&amp;G</p> <p>4 do in-house?</p> <p>5 A. Generally at the direction of counsel, the</p> <p>6 e-discovery team will handle identification,</p> <p>7 preservation, collection in-house.</p> <p>8 Q. And that is a role that you perform?</p> <p>9 A. That's right.</p> <p>10 Q. And you have performed that role since 2008?</p> <p>11 A. Yes, that's right.</p> <p>12 Q. And did you perform that role or did Lisa</p> <p>13 perform that role in the Prilosec OTC?</p> <p>14 A. Lisa worked with counsel to identify the data</p> <p>15 and then worked with them for the necessary</p> <p>16 preservation.</p> <p>17 Q. And what about collection?</p> <p>18 A. To the best of my knowledge, collection has</p> <p>19 not been done yet. We have the preservation and the</p> <p>20 legal hold in place.</p> <p>21 Q. Do you know when the legal hold was put in</p> <p>22 place for the Prilosec OTC litigation?</p> <p>23 MR. SCHAEFER: I'll object.</p> <p>24 Q. Go ahead.</p> <p>25 A. I can't recall.</p>	<p style="text-align: right;">Page 84</p> <p>1 date you gave that deposition?</p> <p>2 A. That would have been in the spring of 2008.</p> <p>3 Wait. Yes, spring of 2008.</p> <p>4 Q. And today is your second deposition?</p> <p>5 A. That's right.</p> <p>6 MR. DENTON: Let's mark this as Exhibit 3.</p> <p>7 ---</p> <p>8 (Exhibit 3 marked.)</p> <p>9 ---</p> <p>10 BY MR. DENTON:</p> <p>11 Q. I'm handing you Exhibit 3, which is the</p> <p>12 notice for the deposition.</p> <p>13 Have you ever seen Exhibit 3 before today --</p> <p>14 before I just handed it to you?</p> <p>15 MR. SCHAEFER: We'll object to that as notice</p> <p>16 of this deposition. This is something that was</p> <p>17 received --</p> <p>18 MR. GREEN: This --</p> <p>19 MR. DENTON: Wait, wait. I just -- the</p> <p>20 question was has he ever seen it. You don't need a</p> <p>21 speaking, coaching information from counsel.</p> <p>22 MR. SCHAEFER: You said this was notice of</p> <p>23 the deposition. This is not the notice of deposition.</p> <p>24 MR. DENTON: I disagree.</p> <p>25 MR. GREEN: This was just sent last night by</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Would you have that information in your</p> <p>2 office?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any knowledge of where data</p> <p>5 concerning Prilosec OTC would be stored prior to 2009?</p> <p>6 A. I don't believe so, no.</p> <p>7 Q. Who -- if you were asked to answer that</p> <p>8 question, who would you go interview to try to find out</p> <p>9 where old data prior to your tenure would exist for</p> <p>10 Prilosec OTC?</p> <p>11 MR. SCHAEFER: I'll just object as vague.</p> <p>12 A. To determine if I remember where any old data</p> <p>13 is beforehand, the practice would be to approach a</p> <p>14 current employee that owns the current system and ask</p> <p>15 questions to see how far back it goes.</p> <p>16 Q. So, for example, on ARGUS, if there was a</p> <p>17 predecessor system, you would go ask the person who</p> <p>18 runs ARGUS now to see if they have that information?</p> <p>19 A. That would be one strategy, yes.</p> <p>20 Q. You mentioned earlier you had provided one</p> <p>21 30(b)(6) deposition in another litigation.</p> <p>22 What litigation was that?</p> <p>23 A. That was for Fixodent. The Fixodent</p> <p>24 litigation.</p> <p>25 Q. And do you recall approximately what time or</p>	<p style="text-align: right;">Page 85</p> <p>1 e-mail. It's brand new.</p> <p>2 MR. DENTON: Anything else you want to tell</p> <p>3 your witness before he answers the question, Counsel?</p> <p>4 MR. GREEN: I'm not telling the witness.</p> <p>5 We're telling the Court. This was sent at the eleventh</p> <p>6 hour. This is not the notice for this deposition.</p> <p>7 BY MR. DENTON:</p> <p>8 Q. Have you ever seen Exhibit 3?</p> <p>9 A. No, I have not.</p> <p>10 Q. Have you ever seen the prior draft of the</p> <p>11 deposition notice?</p> <p>12 A. Several months ago, I saw a deposition</p> <p>13 notice.</p> <p>14 Q. Let's go to Page 10 of Exhibit 3. Let's look</p> <p>15 at Paragraph 1. Please read it to yourself and then</p> <p>16 I'll ask you a question about it.</p> <p>17 A. The first paragraph?</p> <p>18 Q. Paragraph Number 1 under Deposition Topics.</p> <p>19 A. Okay.</p> <p>20 Q. Are you capable of testifying about the</p> <p>21 topics listed in Paragraph 1 on Page 10?</p> <p>22 MR. SCHAEFER: Object.</p> <p>23 A. Yes, to the best of my ability.</p> <p>24 Q. Let's look at Paragraph 2 on Page 10. Please</p> <p>25 read it to yourself and then I'll ask you a question</p>

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<p>1 about it.</p> <p>2 A. What was your question?</p> <p>3 Q. My question is: Would you have access to the</p> <p>4 information to answer the Question Number 2 on Page 10</p> <p>5 of this deposition notice?</p> <p>6 MR. SCHAEFER: I'll object and state that the</p> <p>7 response is not speaking on behalf of the corporation.</p> <p>8 This is a 30(b)(6) witness. His personal opinion about</p> <p>9 what he's capable of testifying to doesn't reflect the</p> <p>10 notice to the company, and this is not an operative</p> <p>11 notice for this deposition.</p> <p>12 MR. DENTON: It is the operative notice.</p> <p>13 MR. SCHAEFER: If I could have a continuing</p> <p>14 objection, then I won't have to object to every</p> <p>15 question.</p> <p>16 MR. DENTON: You can have a continuing</p> <p>17 objection to anything you can fathom. How about that?</p> <p>18 Because I'm going to raise all of this with the Court.</p> <p>19 BY MR. DENTON:</p> <p>20 Q. Now, the question is: Would you be able, as</p> <p>21 an employee of Procter &amp; Gamble, to answer the</p> <p>22 information in Paragraph 2 on Page 10?</p> <p>23 A. To the best of my ability, yes.</p> <p>24 Q. Let's go to the next page. Let's look at</p> <p>25 Number 3. Please read it to yourself and then I will</p>	<p>1 Q. Number 7, please read that. Same question:</p> <p>2 Would you be able to answer that question if allowed by</p> <p>3 counsel?</p> <p>4 A. Same answer as before.</p> <p>5 Q. All right. Number 8, please.</p> <p>6 A. Okay.</p> <p>7 Q. Same question.</p> <p>8 A. Same as before. To the best of my ability,</p> <p>9 yes.</p> <p>10 Q. Let's look at Number 9.</p> <p>11 A. Yes, the same as before.</p> <p>12 Q. So you could answer Number 9 if allowed to?</p> <p>13 A. If allowed, yes.</p> <p>14 Q. Number 10, please read it. Same question.</p> <p>15 A. Same answer as before. To the best of my</p> <p>16 ability.</p> <p>17 Q. All right. Let's go back to Number 1 on Page</p> <p>18 10.</p> <p>19 A. In Exhibit 3?</p> <p>20 Q. Yes. I'm sorry. Yes, Page 10, Number 1.</p> <p>21 A. Okay.</p> <p>22 Q. Please explain to me all of the practices and</p> <p>23 protocols and procedures followed by P&amp;G to identify</p> <p>24 and preserve electronic and paper data and other</p> <p>25 documents potentially relevant to the claims or</p>
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<p>1 ask a question.</p> <p>2 A. Okay.</p> <p>3 Q. Would you have the ability to obtain the</p> <p>4 information necessary to answer Paragraph 3?</p> <p>5 A. To the best of my ability, yes.</p> <p>6 Q. Please read Paragraph 4 and I'm going to ask</p> <p>7 you the same question.</p> <p>8 A. Okay.</p> <p>9 Q. Are you able --</p> <p>10 A. Yes. The same as the previous responses. To</p> <p>11 the best of ability, yes.</p> <p>12 Q. All right. Let's look at Paragraph 5.</p> <p>13 Please read it and I'm going to ask you the same</p> <p>14 question.</p> <p>15 A. Okay.</p> <p>16 Q. What's your answer, please?</p> <p>17 A. The same as before. Yes, to the best of my</p> <p>18 ability.</p> <p>19 Q. All right. Next page, let's look at</p> <p>20 Number 6, please.</p> <p>21 A. Okay.</p> <p>22 Q. Do you have information that's responsive to</p> <p>23 Number 6? Could you answer that question if allowed</p> <p>24 to?</p> <p>25 A. To the best of my ability, yes.</p>	<p>1 defenses in this litigation.</p> <p>2 A. The standard practice and policy is the</p> <p>3 e-discovery team works with counsel. Counsel will</p> <p>4 identify custodians, and then counsel will release a</p> <p>5 list to send out -- of people to send out a legal hold.</p> <p>6 And in this legal hold notice, it asks the employees to</p> <p>7 confirm their duties to preserve data, as well as</p> <p>8 acknowledge their duties to preserve the data, as well</p> <p>9 as make sure that they maintain and store and do not</p> <p>10 modify or delete any data in their possession related</p> <p>11 to the claim or defense matter.</p> <p>12 Q. All right.</p> <p>13 A. After that, counsel will work with the</p> <p>14 electronic discovery team and issue an e-mail hold.</p> <p>15 And from there, once we -- counsel and the e-discovery</p> <p>16 team has preserved the e-mails, as well as made sure</p> <p>17 the necessary legal holds are in place for specific</p> <p>18 application or systems, then we're ready, if necessary,</p> <p>19 to -- subject to the Court, to start the collection</p> <p>20 process.</p> <p>21 Q. Okay. How is it that your department goes</p> <p>22 about preserving e-mails of custodians that have been</p> <p>23 identified?</p> <p>24 A. Once we have the names of the employees and</p> <p>25 once we've confirmed that they've received a legal</p>

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<p>1 hold, then we work with the e-mail team, which</p> <p>2 typically is a vendor, and we release a request for</p> <p>3 them to put on an e-mail hold. And we preserve the</p> <p>4 data in their mailbox.</p> <p>5 Q. How do you go about preserving the e-mails on</p> <p>6 each computer?</p> <p>7 A. Every employee has an account that is synced</p> <p>8 with Microsoft Exchange server, and so we preserve the</p> <p>9 data on the Microsoft Exchange server.</p> <p>10 Q. All right.</p> <p>11 A. And that includes only the e-mails that the</p> <p>12 employee has synced with Microsoft Exchange server.</p> <p>13 Q. And what do you mean by "synced"?</p> <p>14 A. By "synced," I mean that if the sent and</p> <p>15 received or saved drafts, so forth, have communicated</p> <p>16 with the Microsoft Exchange server, that we would</p> <p>17 preserve that.</p> <p>18 Q. Let me give you a hypothetical. An employee</p> <p>19 sends an e-mail to another employee. Is that retained</p> <p>20 at the Microsoft e-mail server?</p> <p>21 A. If that person is under e-mail hold, then</p> <p>22 under that hypothetical, yes.</p> <p>23 Q. But are e-mails retained at the server</p> <p>24 outside of litigation to standard practice for some</p> <p>25 period of time?</p>	<p>1 the server, or preserving them at the server, is that</p> <p>2 done in-house by P&amp;G employees, or is that a vendor?</p> <p>3 A. It's done by a vendor.</p> <p>4 Q. And does that vendor have to come on-site to</p> <p>5 do that or can they remotely access the server?</p> <p>6 A. It's handled remotely.</p> <p>7 Q. So is it fair to say that the remote vendor,</p> <p>8 on e-mails, would have to receive a list of employees</p> <p>9 that they needed to preserve at the server level?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have a list in your possession of the</p> <p>12 employees that have been put on a legal hold for the</p> <p>13 Prilosec litigation?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know when the legal hold was</p> <p>16 implemented?</p> <p>17 A. I can't recall.</p> <p>18 Q. You would have that information back at the</p> <p>19 office, true?</p> <p>20 A. Yes.</p> <p>21 MR. DENTON: Let's take a short break. We</p> <p>22 may be close.</p> <p>23 MR. SCHAEFER: Okay, good.</p> <p>24 (Recess taken.)</p> <p>25 MR. DENTON: I don't have any more questions</p>
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<p>1 A. I'm not sure I follow.</p> <p>2 Q. Let's assume there's no legal hold and an</p> <p>3 e-mail is sent by one employee to another employee.</p> <p>4 Let's say they're talking about the Cincinnati Reds.</p> <p>5 Is that e-mail preserved on the server for</p> <p>6 some number of days in the ordinary course of business?</p> <p>7 A. So if I understand you correctly, you're</p> <p>8 asking me if an employee not under legal hold sends an</p> <p>9 e-mail, theoretically, yes, the e-mail should still be</p> <p>10 available on the server. But it may be subject to</p> <p>11 routine deletion rules.</p> <p>12 Q. That's really what I was trying to ask, what</p> <p>13 is the routine deletion rules outside of the legal</p> <p>14 hold?</p> <p>15 A. My understanding is that if a person deletes</p> <p>16 an e-mail, then it becomes removed from the Microsoft</p> <p>17 Exchange server within seven days. But beyond that, to</p> <p>18 the best of my knowledge, that's the only routine rule</p> <p>19 that's uniformly identified.</p> <p>20 Q. And as I understood your prior answer, if an</p> <p>21 employee is subject to a legal hold, all of their</p> <p>22 e-mails are then saved at the server level.</p> <p>23 MR. SCHAEFER: Object to form.</p> <p>24 A. Yes.</p> <p>25 Q. And that process of holding the e-mails at</p>	<p>1 today, although I am putting on the record that I don't</p> <p>2 believe this deposition is complete. I think he's been</p> <p>3 improperly instructed not to answer certain questions.</p> <p>4 I also believe there are time frames and other</p> <p>5 information that he doesn't have information that he</p> <p>6 can answer. And so that's not his fault, but Procter &amp;</p> <p>7 Gamble's going to have to fill in those gaps with some</p> <p>8 other witness.</p> <p>9 We are going to be asking for costs and</p> <p>10 expenses for what we believe is an improper</p> <p>11 stonewalling of information that this witness could</p> <p>12 have provided. I don't want to debate it on the</p> <p>13 record. I just want to make the record. We'll take it</p> <p>14 up with the judge at the next status conference.</p> <p>15 MR. GREEN: I would just add that to the</p> <p>16 extent -- first of all, I do think it is improper.</p> <p>17 Beyond that, some of the questions you're referring to</p> <p>18 were outside of what we agreed would be the topic</p> <p>19 areas.</p> <p>20 MR. DENTON: Well, the topic areas we want</p> <p>21 covered by some witness relate to everything in the</p> <p>22 notice. I understand you sent me a letter, which we</p> <p>23 did mark as Exhibit 2, of what you said this witness</p> <p>24 could testify about. But that is in no way waiving our</p> <p>25 position that these other topics are appropriate or</p>

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<p>1 relevant. Procter &amp; Gamble needs to provide such a</p> <p>2 witness. And actually going through the notice, it is</p> <p>3 pretty clear this is the gentleman who could have</p> <p>4 answered all of those questions.</p> <p>5 So with that, I'm closing the record.</p> <p>6 MR. GREEN: That's a new notice. It's not</p> <p>7 the notice you sent us originally.</p> <p>8 MR. DENTON: It's almost verbatim.</p> <p>9 MR. GREEN: No.</p> <p>10 MR. DENTON: The point is, this witness could</p> <p>11 have answered and has the ability to answer all of</p> <p>12 those topics, so I assume we're coming back.</p> <p>13 MR. SCHAEFER: The only thing I'll add, then,</p> <p>14 is that the notice we provided -- excuse me, the</p> <p>15 correspondence we provided January 24, 2018 was in</p> <p>16 response to a request from plaintiffs' counsel to</p> <p>17 provide a list of topics the witness would be prepared</p> <p>18 to testify about. And that's what we've done today.</p> <p>19 We provided that list back on the 24th of January, and</p> <p>20 that was operative and what we prepared the witness for</p> <p>21 today, and that was at the invitation of opposing</p> <p>22 counsel.</p> <p>23 MR. DENTON: The truth of the matter is,</p> <p>24 we've always wanted the witness to respond to</p> <p>25 everything in the notice. You have said that both</p>	<p>1 You sent us red lines. That's -- we didn't accept</p> <p>2 those red lines. We told you the notice is what the</p> <p>3 notice is. You've not filed objections to it. You</p> <p>4 sent red lines to it. You provided this letter, and</p> <p>5 this witness testified about the topics in that letter</p> <p>6 to some extent. He didn't have the documents that were</p> <p>7 to be produced. And we still have a notice out there</p> <p>8 that we're going to need a witness for.</p> <p>9 All I'm saying is, this witness clearly</p> <p>10 testified today he could answer all of those questions,</p> <p>11 and so we expect to be back to ask him those questions</p> <p>12 at some point on --</p> <p>13 MR. GREEN: Except you didn't take him</p> <p>14 through the definitions and the instructions and all of</p> <p>15 the stuff that takes us way back to time frames that</p> <p>16 we -- he made clear, and you heard it in his testimony,</p> <p>17 he can't necessarily address.</p> <p>18 MR. DENTON: We can agree to disagree. I</p> <p>19 think we've made a record.</p> <p>20 Unless you want to add something,</p> <p>21 Mr. Schaefer.</p> <p>22 MR. SCHAEFER: Not at this point.</p> <p>23 MR. DENTON: Okay. I think we can close the</p> <p>24 deposition.</p> <p>25 (Signature not waived.)</p>
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<p>1 sides are preserving that. You've objected to certain</p> <p>2 things. You've not filed formal objections. We traded</p> <p>3 red lines. We all said, everybody's preserving</p> <p>4 everything. That's all I'm saying, is I'm preserving</p> <p>5 all of the topics in the notice that I have served.</p> <p>6 And you can file your objections. You can do whatever</p> <p>7 you think is appropriate. But we're going to get</p> <p>8 answers to those questions or you're going to have to</p> <p>9 get an objection sustained by the Court to them at some</p> <p>10 point.</p> <p>11 MR. SCHAEFER: Sure.</p> <p>12 MR. GREEN: We didn't trade red lines. We</p> <p>13 offered red lines, and you all refused to further red</p> <p>14 line and asked us to do what we did instead, which was</p> <p>15 to provide a list of topics that he would cover.</p> <p>16 I understand we agreed we could argue later</p> <p>17 about whether the scope -- about the scope of the</p> <p>18 notice and so forth. And we can push that down the</p> <p>19 road. So I'm not saying you waived stuff that you</p> <p>20 asked originally in the notice, but we presented him</p> <p>21 today to address those topics in that letter, which was</p> <p>22 done at your directive. We tried to red line it, and</p> <p>23 you guys didn't want to go that route. So we went your</p> <p>24 route, and that's what -- this was the result.</p> <p>25 MR. DENTON: We didn't go anybody's route.</p>	<p>1 ---</p> <p>2 Thereupon, the deposition was concluded</p> <p>3 at approximately 2:10 p.m.</p> <p>4 ---</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>Page 98</p> <p>1 STATE OF OHIO: 2 SS: 3 COUNTY OF _____: 4 I, SCOTT VAN NICE, do hereby certify that I 5 have read the foregoing transcript of my deposition 6 given on January 31, 2018; that together with the 7 correction page attached hereto noting changes to form 8 or substance, if any, it is true and correct.</p> <p>9 _____ 10 SCOTT VAN NICE 11 I do hereby certify that the foregoing 12 transcript of the deposition of SCOTT VAN NICE was 13 submitted to the witness for reading and signing; that 14 after he had stated to the undersigned Notary Public 15 that he had read and examined his deposition, he signed 16 the same in my presence on this ____ day of 17 _____, 2018.</p> <p>18 _____ 19 NOTARY PUBLIC, STATE OF OHIO 20 My commission expires: _____ 21 --- 22 23 24 25</p>	<p>Page 100</p> <p>1 - - - - - 2 E R R A T A 3 - - - - -</p> <p>4 PAGE LINE CHANGE</p> <p>5 _____ 6 REASON: _____ 7 _____ 8 REASON: _____ 9 _____ 10 REASON: _____ 11 _____ 12 REASON: _____ 13 _____ 14 REASON: _____ 15 _____ 16 REASON: _____ 17 _____ 18 REASON: _____ 19 _____ 20 REASON: _____ 21 _____ 22 REASON: _____ 23 _____ 24 REASON: _____ 25</p>
<p>Page 99</p> <p>1 CERTIFICATE 2 THE STATE OF OHIO: 3 SS: 4 COUNTY OF DELAWARE: 5 I, Sara S. Clark, RPR/RMR/CRR/CRC, a Notary 6 Public in and for the State of Ohio, duly commissioned 7 and qualified, certify that the within named SCOTT VAN 8 NICE was by me duly sworn to testify to the whole truth 9 in the cause aforesaid; that the testimony was taken 10 down by me in stenotypy in the presence of said 11 witness, afterwards transcribed upon a computer; that 12 the foregoing is a true and correct transcript of the 13 testimony given by said witness taken at the time and 14 place in the foregoing caption specified.</p> <p>15 I certify that I am not a relative, employee, 16 or attorney of any of the parties hereto, or of any 17 attorney employed by the parties, or financially 18 interested in the action.</p> <p>19 IN WITNESS WHEREOF, I have set my hand and 20 affixed my seal of office at Delaware, Ohio, on this 21 14th day of February, 2018.</p> <p>22 _____ 23 Sara S. Clark, RPR/RMR/CRR/CRC 24 Notary Public, State of Ohio 25 My commission expires: March 10, 2018.</p>	

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